

"Reviewed" Events per Million Population (by State)

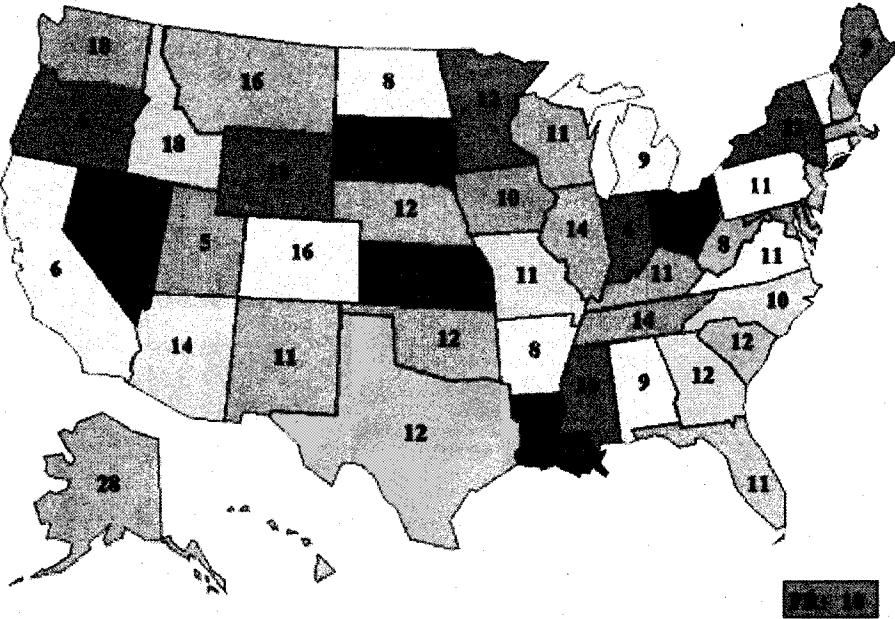
As of December 31, 2004

SENATE JUDICIARY

Exhibit No. 7

Date 3-21-07

Bill No. HB 695



Limiting Tort Liability for Medical Malpractice

The past few years have seen a sharp increase in premiums for medical malpractice liability insurance, which health care professionals buy to protect themselves from the costs of being sued (see Figure 1 on page 2). On average, premiums for all physicians nationwide rose by 15 percent between 2000 and 2002—nearly twice as fast as total health care spending per person. The increases during that period were even more dramatic for certain specialties: 22 percent for obstetricians/gynecologists and 33 percent for internists and general surgeons.¹ (For a definition of malpractice and other terms used in this brief, see Box 1 on page 3).

The available evidence suggests that premiums have risen both because insurance companies have faced increased costs to pay claims (from growth in malpractice awards) and because of reduced income from their investments and short-term factors in the insurance market. Some observers fear that rising malpractice premiums will cause physicians to stop practicing medicine, thus reducing the availability of health care in some parts of the country.

To curb the growth of premiums, the Administration and Members of Congress have proposed several types of restrictions on malpractice awards. Bills introduced in the House and Senate in 2003 would impose caps on awards for noneconomic and punitive damages, reduce the statute of limitations on claims, restrict attorneys' fees, and

allow evidence of any benefits that plaintiffs collect from other sources (such as their insurance) to be admitted at trial. Limits of one kind or another on liability for malpractice injuries, or "torts," are relatively common at the state level: more than 40 states had at least one restriction in effect in 2002.²

Evidence from the states indicates that premiums for malpractice insurance are lower when tort liability is restricted than they would be otherwise. But even large savings in premiums can have only a small direct impact on health care spending—private or governmental—because malpractice costs account for less than 2 percent of that spending.³ Advocates or opponents cite other possible effects of limiting tort liability, such as reducing the extent to which physicians practice "defensive medicine" by conducting excessive procedures; preventing widespread problems of access to health care; or conversely, increasing medical injuries. However, evidence for those other effects is weak or inconclusive.

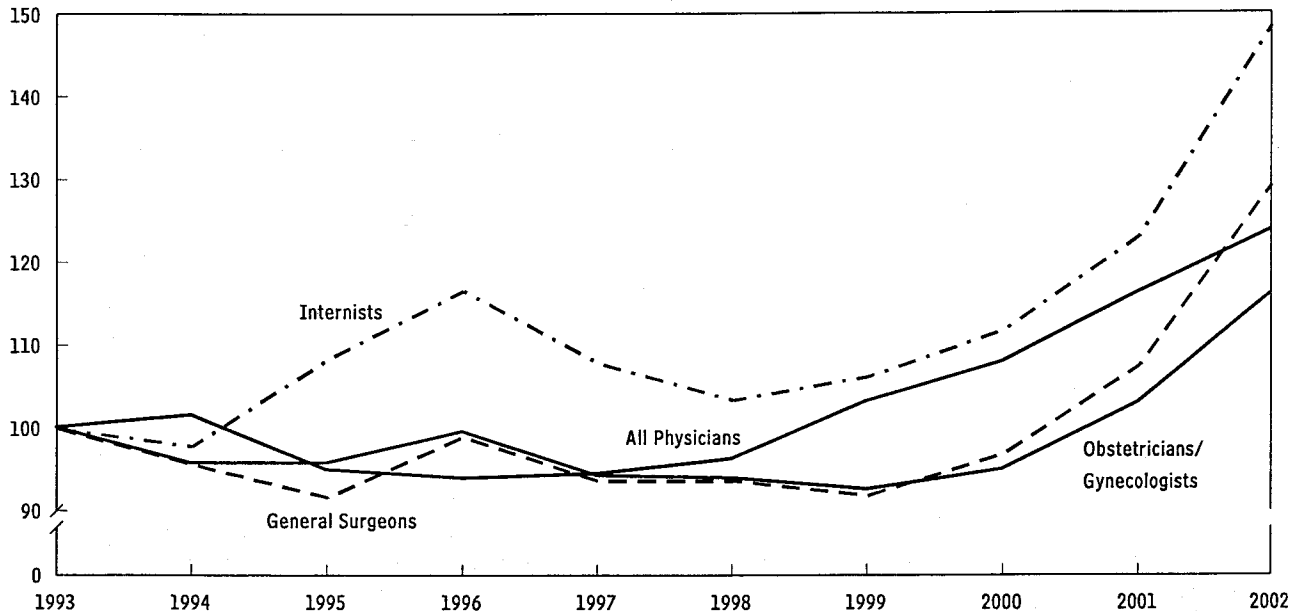
1. The figure for all physicians comes from survey data from the Centers for Medicare and Medicaid Services; the figures for various specialties come from annual surveys conducted by *Medical Liability Monitor* newsletter. Both sets of surveys collect data on base rates charged by insurers and thus do not reflect discounts or additional charges applied to individual policies. Moreover, the latter surveys do not incorporate the relative market shares of insurers, so the averages are not weighted. (Note that most of the numbers reported in this issue brief are for physicians; less information is available for other types of health care providers, but trends appear to be similar for them.)

2. That number comes from the Congressional Budget Office's database of state laws on medical malpractice torts. The database includes information from the National Conference of State Legislatures, the American Tort Reform Association, and the law firm of McCullough, Campbell, and Lane. For a discussion of whether tort liability issues are better addressed at the federal or the state level, see Congressional Budget Office, *The Economics of U.S. Tort Liability: A Primer* (October 2003).

3. The 2 percent figure is a CBO calculation based on data from Tillinghast-Towers Perrin (an actuarial and management consulting firm) and the Office of the Actuary at the Centers for Medicare and Medicaid Services.

Figure 1.**Trends in Premiums for Physicians' Medical Malpractice Insurance, by Type of Physician, 1993 to 2002**

(Index, 1993 = 100)



Source: Congressional Budget Office based on data from the Office of the Actuary at the Centers for Medicare and Medicaid Services (data for all physicians) and from annual premium surveys conducted by *Medical Liability Monitor* newsletter (data for physicians by specialty).

The Goals and Pitfalls of Tort Liability for Medical Malpractice

Issues surrounding the effects of the malpractice system and of possible restrictions on it can be viewed as questions of economic efficiency (providing the maximum possible net benefits to society) and equity (distributing the benefits and costs fairly).

Fairness is ultimately in the eye of the beholder. But the common equity-related argument for malpractice liability is that someone harmed by the actions of a physician or other medical professional deserves to be compensated by the injuring party.

The efficiency argument is that, in principle, liability (as a supplement to government regulations, professional oversight, and the desire of health care providers to maintain good reputations) gives providers an incentive to control the incidence and costs of malpractice injuries. In

practice, however, the effect on efficiency depends on the standards used to distinguish medical negligence from appropriate care and on the accuracy of malpractice judgments and awards. If malpractice is judged inaccurately or is not clearly defined, doctors may carry out excessive tests and procedures to be able to cite as evidence that they were not negligent. Likewise, if malpractice is defined clearly but too broadly or if awards tend to be too high, doctors may engage in defensive medicine, inefficiently restrict their practices, or retire. Conversely, if doctors face less than the full costs of their negligence—because they are insulated by liability insurance or because malpractice is unrecognized or undercompensated—they may have too little incentive to avoid risky practices. For all of those reasons, it is not clear whether trying to control malpractice by means of liability improves economic efficiency or reduces it.

Box 1.**Definitions of Some Common Tort Terms**

Collateral-source benefits: Amounts that a plaintiff recovers from sources other than the defendant, such as the plaintiff's own insurance.

Economic damages: Funds to compensate a plaintiff for the monetary costs of an injury, such as medical bills or loss of income.

Joint-and-several liability: Liability in which each liable party is individually responsible for the entire obligation. Under joint-and-several liability, a plaintiff may choose to seek full damages from all, some, or any one of the parties alleged to have committed the injury. In most cases, a defendant who pays damages may seek reimbursement from nonpaying parties.

Malpractice: "Failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or

damage to the recipient of those services or to those entitled to rely upon them."¹

Negligence: A violation of a duty to meet an applicable standard of care.

Noneconomic damages: Damages payable for items other than monetary losses, such as pain and suffering. The term technically includes punitive damages, but those are typically discussed separately.

Punitive damages: Damages awarded in addition to compensatory (economic and noneconomic) damages to punish a defendant for willful and wanton conduct.

Statute of limitations: A statute specifying the period of time after the occurrence of an injury—or, in some cases, after the discovery of the injury or of its cause—during which any suit must be filed.

1. Bryan A. Garner, ed., *Black's Law Dictionary*, 6th ed. (St. Paul, Minn.: West Group, 1990), p. 959.

The costs of court-imposed awards and out-of-court settlements for malpractice are reflected in the premiums charged for malpractice insurance. If those costs are inefficiently high (or low), premiums will tend to be too, on average. But premiums can also be a source of inefficiency themselves. The amounts that physicians pay for malpractice coverage are generally based on broad aggregates, which reflect factors such as doctors' medical specialties and locations but neglect relevant differences in the quality of their services. Thus, even if premiums are correct on average, they may be too high for the large majority of physicians and too low for a minority who are less careful or competent.

Why Have Malpractice Premiums Risen So Sharply?

Premiums for malpractice insurance are set so that over time, insurers' income from those premiums equals their

total costs (including the cost of providing a competitive return to their investors) minus their income from investing any funds they hold in reserve. In the short term, however, premiums may be above or below that equilibrium level, with profits fluctuating or reserves rising or falling as a result.

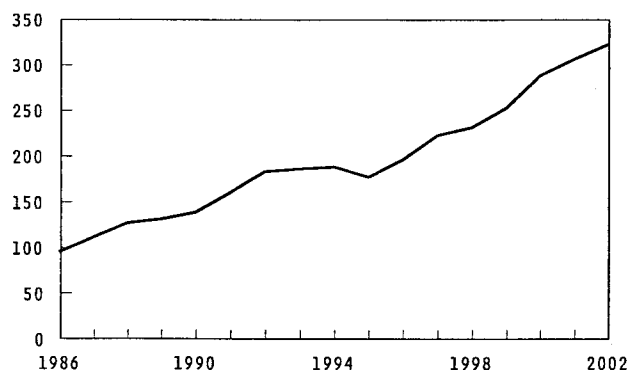
A full analysis of the reasons for the recent rise in premiums is beyond the scope of this brief. But the available evidence suggests that higher costs for insurers (particularly from increases in the size of malpractice awards), lower investment income, and short-term factors such as cyclical patterns in the insurance market have all played major roles.

Increased Costs

Payments of claims are the most significant costs that malpractice insurers face, accounting for about two-thirds of their total costs. The average payment for a malpractice claim has risen fairly steadily since 1986, from

Figure 2.**Average Insurance Payment for Closed Malpractice Claims, 1986 to 2002**

(Thousands of dollars)



Source: Physician Insurers Association of America.

Note: These averages exclude closed claims that did not result in payments.

about \$95,000 in that year to \$320,000 in 2002 (see Figure 2). That increase represents an annual growth rate of nearly 8 percent—more than twice the general rate of inflation.⁴

Although the cost per successful claim has increased, the rate of such claims has remained relatively constant. Each year, about 15 malpractice claims are filed for every 100 physicians, and about 30 percent of those claims result in an insurance payment.⁵

The other one-third of malpractice insurers' costs comprise legal costs for policyholders who are sued and underwriting and administrative expenses. Those types of costs have also increased. Like claims payments, legal-

defense costs grew by about 8 percent annually during the 1986-2002 period, from around \$8,000 per claim to more than \$27,000.⁶ In addition, the many malpractice insurers who buy reinsurance to protect themselves from large losses have seen that part of their underwriting costs rise significantly over the past decade. (Those increases are not related solely to medical malpractice but reflect a general tightening of the reinsurance market in the wake of such catastrophic events as Hurricane Andrew in 1992, the Northridge earthquake in 1994, and the terrorist attacks of September 11, 2001.)⁷

Reduced Investment Income

Insurers generally base the malpractice premiums they charge in a given year on the future payments they expect to make for claims filed in that year. On average, claims are settled five years after the premiums for them were collected, and the income that insurers earn from investing premium receipts in the meantime is an important source of funds for them.

Insurance companies' investment yields have been lower for the past few years, putting pressure on premiums to make up the difference. According to the General Accounting Office (GAO), annual investment returns for the nation's 15 largest malpractice insurers dropped by an average of 1.6 percentage points from 2000 to 2002—enough to account for a 7.2 percent increase in premium rates.⁸ That figure corresponds to almost half of the 15 percent increase in rates estimated by the Centers for Medicare and Medicaid Services.

Short-Term Factors

Premium increases in recent years may also reflect temporary adjustments in the reserve levels and profit rates of insurance companies. Premiums rose sharply for a few years in the late 1980s because of insurers' expectations of

4. Those figures are based on data collected by the Physician Insurers Association of America. Malpractice claims typically include a component to compensate plaintiffs for additional medical costs they incur because of their injuries, so one factor contributing to the growth in the average value of claims since 1986 has been increases in health care spending—which, on a per-person basis, has risen at an average rate of 6.9 percent a year during that period.

5. Kenneth E. Thorpe, "The Medical Malpractice 'Crisis': Recent Trends and the Impact of State Tort Reforms" (paper presented at the Council on Health Care Economics and Policy conference, "Medical Malpractice in Crisis: Health Care Policy Options," Washington, D.C., March 3, 2003); and CBO calculations based on data from the Physician Insurers Association of America.

6. Claims that did not lead to payments incurred average defense costs of \$22,000 in 2002, compared with \$39,000 for claims that did result in payments.

7. For a discussion of the dynamics of the reinsurance market, see Congressional Budget Office, *Federal Reinsurance for Disasters* (September 2002).

8. General Accounting Office, *Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates*, GAO-03-702 (June 2003), p. 27.

future claims, which proved to be too high. The result was an accumulation of reserves, which were drawn down in the 1990s during a period of relative stability in premiums. If insurers' current expectations of future claims also turn out to be too high, the same thing could happen again.

The recent increases may also be a self-limiting response to insurers' low profits. In some states, premiums have been significantly affected when major insurers have decided to withdraw from the malpractice market, either locally or nationally. For example, in West Virginia and Nevada, the St. Paul Company had market shares of 43 percent and 36 percent, respectively, when it stopped renewing policies in August 2001 and then left the market entirely.⁹ Such a reduction in the supply of malpractice insurance can help drive premiums up sharply in the short run. But those higher premiums encourage other malpractice insurers to expand their insurance offerings in those markets and thus tend to moderate future price increases (all other things being equal).

Potential Effects of Some Restrictions Under Consideration

In theory, the kinds of limits on malpractice liability that are being considered in the Congress could either enhance or detract from economic efficiency, depending on the current state of the liability system. For example:

- Capping or otherwise restricting awards for noneconomic losses and punitive damages might improve efficiency if such awards are now frequently arbitrary or excessive. It would do so by reducing the extent to which disproportionate awards distort the incentives for providers to practice medicine safely. Conversely, that change might undermine incentives for safety and reduce efficiency if current awards are generally appropriate.
- Allowing evidence of benefits that patients receive from collateral sources to be presented at trial might improve efficiency if today judges or juries sometimes

wrongly find health care providers negligent out of (perhaps subconscious) concern that plaintiffs would otherwise be in dire financial straits. Or again, it might reduce efficiency if it encouraged carelessness by providers.

- Capping "contingent" fees (those set by a plaintiff's attorney as a percentage of any damages awarded to the plaintiff) could improve efficiency by reducing nuisance suits. Conversely, such a change could reduce efficiency by making it harder for some patients with legitimate but difficult claims to find legal representation.

Evidence About the Effects of Restricting Malpractice Liability

Several studies have found that various types of restrictions on malpractice liability can indeed reduce total awards and thereby lead to lower premiums for malpractice insurance. By themselves, however, such changes do not affect economic efficiency: they modify the distribution of gains and losses to individuals and groups but do not create benefits or costs for society as a whole. The evidence for indirect effects on efficiency—through changes in defensive medicine, the availability of medical care, or the extent of malpractice—is at best ambiguous.

Effects on Malpractice Premiums

In 1993, the Office of Technology Assessment issued a report summarizing the first wave of studies on the experience of states that set limits on malpractice liability in the 1970s and 1980s. The report concluded that caps on damage awards consistently reduced the size of claims and, in turn, premium rates for malpractice insurance. Further, it found that limiting the use of joint-and-several liability, requiring awards to be offset by the value of collateral-source benefits, and reducing statutes of limitations for filing claims were also effective in slowing the growth of premiums.¹⁰

More-recent studies have reached similar conclusions. A 2003 study that examined state data from 1993 to 2002 found that two restrictions—a cap on noneconomic

9. The St. Paul Company had been the largest or second-largest malpractice insurer in nine other states as well; see Thorpe, "The Medical Malpractice 'Crisis'."

10. Office of Technology Assessment, *Impact of Legal Reforms on Medical Malpractice Costs* (September 1993), p. 66.

damages and a ban on punitive damages—would together reduce premiums by more than one-third (all other things being equal).¹¹ And based on its own research on the effects of tort restrictions, the Congressional Budget Office (CBO) estimated that the provisions of the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2003 (H.R. 5) would lower premiums nationwide by an average of 25 percent to 30 percent from the levels likely to occur under current law. (The savings in each state would depend in part on the restrictions already in effect there.)

Savings of that magnitude would not have a significant impact on total health care costs, however. Malpractice costs amounted to an estimated \$24 billion in 2002, but that figure represents less than 2 percent of overall health care spending.¹² Thus, even a reduction of 25 percent to 30 percent in malpractice costs would lower health care costs by only about 0.4 percent to 0.5 percent, and the likely effect on health insurance premiums would be comparably small.¹³

Effects on Defensive Medicine

Proponents of limiting malpractice liability have argued that much greater savings in health care costs would be possible through reductions in the practice of defensive medicine. However, some so-called defensive medicine may be motivated less by liability concerns than by the income it generates for physicians or by the positive (albeit small) benefits to patients. On the basis of existing

studies and its own research, CBO believes that savings from reducing defensive medicine would be very small.

A comprehensive study using 1984 data from the state of New York did not find a strong relationship between the threat of litigation and medical costs, even though physicians reported that their practices had been affected by the threat of lawsuits.¹⁴ More recently, some researchers observed reductions in health care spending correlated with changes in tort law, but their studies were based on a narrow part of the population and considered spending for only a few ailments. One study analyzed the impact of tort limits on Medicare hospital spending for patients who had been hospitalized for acute myocardial infarction or ischemic heart disease; it observed a significant decline in spending in states that had enacted certain tort restrictions.¹⁵ Other research examined the effect of tort limits on the proportion of births by cesarean section. It also found savings in states with tort limits, though of a much smaller magnitude.¹⁶

However, when CBO applied the methods used in the study of Medicare patients hospitalized for two types of heart disease to a broader set of ailments, it found no evidence that restrictions on tort liability reduce medical spending. Moreover, using a different set of data, CBO found no statistically significant difference in per capita

11. Thorpe, "The Medical Malpractice 'Crisis'."

12. U.S. health care spending totaled about \$1.4 trillion in 2002 (excluding spending on public health and capital improvements), according to data from the Office of the Actuary at the Centers for Medicare and Medicaid Services.

13. Moreover, one of the restrictions in H.R. 5—changing the rules for collateral-source benefits—would in some cases merely shift costs from malpractice insurers to providers of such collateral benefits (who in most cases are health insurers) rather than reduce costs overall. As a result, the total dollar impact on health insurance premiums would be smaller than the impact on malpractice premiums. Conversely, the total benefit to the federal Treasury would be larger than the savings in federal spending on health care, because tax revenues would increase to the extent that employers passed on part of their savings in health insurance premiums to their workers in the form of higher taxable wages.

14. Harvard Medical Practice Study, *Patients, Doctors, and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York* (Boston: Harvard University School of Public Health, 1990), Chapter 10, pp. 2-3.

15. Daniel Kessler and Mark McClellan, "Do Doctors Practice Defensive Medicine?" *Quarterly Journal of Economics* (May 1996), pp. 353-390. Specifically, the study estimated that states with any of four restrictions (caps on noneconomic or total damages, prohibitions on punitive damages, no automatic addition of prejudgment interest, and offsets for collateral-source benefits) lowered spending for inpatient care by between 5 percent and 9 percent in the year following the patients' initial admission for either diagnosis. However, the study also found that a second set of tort restrictions (caps on contingent fees for plaintiffs' attorneys, deferred payment of some or all damages, restrictions on joint-and-several liability, and public compensation funds for patients) tended to increase spending by between roughly 2 percent and 3 percent, at least in the short run. Those results were unexplained.

16. Lisa Dubay, Robert Kaestner, and Timothy Waidmann, "The Impact of Malpractice Fears on Cesarean Section Rates," *Journal of Health Economics*, vol. 18 (August 1999), pp. 518-519. Estimated cost savings were 0.27 percent.

health care spending between states with and without limits on malpractice torts. Still, the question of whether such limits reduce spending remains open, and CBO continues to explore it using other research methods.

Effects on the Availability of Physicians' Services

Some observers argue that high malpractice premiums are causing physicians to restrict their practices or retire, leading to a crisis in the availability of certain health care services in a growing number of areas. GAO investigated the situations in five states with reported access problems and found mixed evidence. On the one hand, GAO confirmed instances of reduced access to emergency surgery and newborn delivery, albeit "in scattered, often rural, areas where providers identified other long-standing factors that affect the availability of services." On the other hand, it found that many reported reductions in supply by health care providers could not be substantiated or "did not widely affect access to health care."¹⁷

Effects on Malpractice

Defenders of current tort law sometimes argue that restrictions on malpractice liability could undermine the deterrent effect of such liability and thus lead to higher rates of medical injuries. However, it is not obvious that the current tort system provides effective incentives to control such injuries. One reason for doubt is that health care providers are generally not exposed to the financial cost of their own malpractice risk because they carry liability insurance, and the premiums for that insurance do not reflect the records or practice styles of individual providers but more-general factors such as location and medical specialty.¹⁸ Second, evidence suggests that very few

medical injuries ever become the subject of a tort claim. The 1984 New York study estimated that 27,179 cases of medical negligence occurred in hospitals throughout the state that year, but only 415—or 1.5 percent—led to claims.¹⁹

In short, the evidence available to date does not make a strong case that restricting malpractice liability would have a significant effect, either positive or negative, on economic efficiency. Thus, choices about specific proposals may hinge more on their implications for equity—in particular, on their effects on health care providers, patients injured through malpractice, and users of the health care system in general.

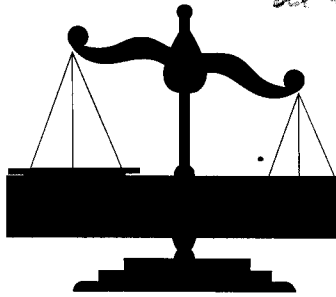
Related CBO Publications: *The Economics of U.S. Tort Liability: A Primer* (October 2003) and *Cost Estimate for H.R. 5, the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2003* (March 10, 2003), available at www.cbo.gov.

This policy brief was prepared by Perry Beider of CBO's Microeconomic and Financial Studies Division and Stuart Hagen of CBO's Health and Human Resources Division.

17. General Accounting Office, *Medical Malpractice: Implications of Rising Premiums on Access to Health Care*, GAO-03-836 (August 2003), unnumbered summary page ("What GAO Found") and p. 5. GAO's study also included a comparison group of four states without reported access problems.

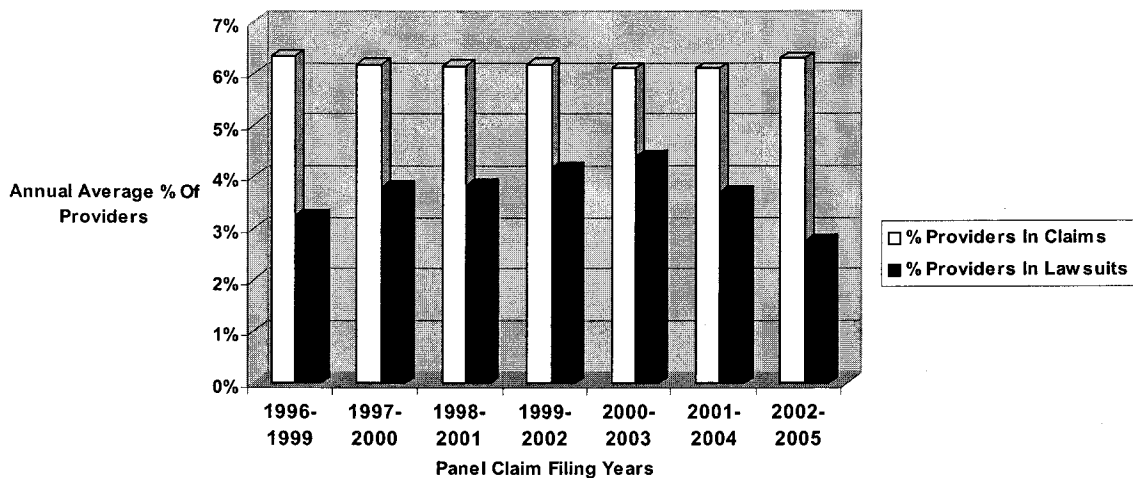
18. However, providers incur other financial and psychic costs (in time, loss of reputation, and so on) when they are sued for malpractice. Moreover, in some cases, they lose their insurance coverage.

19. A. Russell Localio and others, "Relation Between Malpractice Claims and Adverse Events Due to Negligence," *New England Journal of Medicine*, vol. 325, no. 4 (July 25, 1991), pp. 245-251. Many acts of negligence are undoubtedly too minor to justify filing a tort claim. But the 27,179 estimated cases of negligence in 1984 included 5,396 with strong evidence that the negligence contributed to patient disabilities of six months or more—and the estimated 415 claims actually filed correspond to just 7.7 percent of that smaller number of cases.



MONTANA MEDICAL LEGAL PANEL

The Percentage Of Montana Health Care Providers In Medical Malpractice Claims & Lawsuits
(Not Jury Trials)



MONTANA MEDICAL MALPRACTICE CLAIMS, LAWSUITS, JURY TRIALS, LARGE LOSSES, APPEALS & PAID CLAIMS

1996 Through 2005

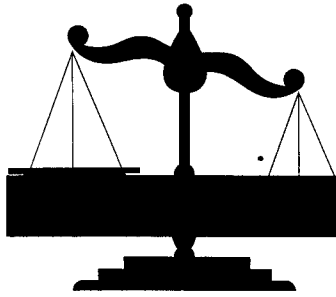
YEAR 2006 MONTANA MEDICAL LEGAL PANEL REPORT

G. Brian Zins, Director, Montana Medical Legal Panel, 2021 11th Avenue, Helena, Montana 59601
(Copy Of Full Report At: <http://www.mmaoffice.org/>)

March 8, 2006

What happened *after* the Panel? See Summarization on Page 4, details in full Report.

HB 695, Senate Judiciary, Requested by Senator McGee - submitted by Al Smith, MTLA, 439-3124



MONTANA MEDICAL MALPRACTICE CLAIMS, LAWSUITS, JURY TRIALS, LARGE LOSSES, APPEALS & PAID CLAIMS - 1996 Through 2005

2006 Annual Report - The MONTANA MEDICAL LEGAL PANEL

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After the first of each year - for purposes of determining the annual assessment charged to Health Care Providers covered by the Panel and for reporting the progress of the Panel to the Montana Supreme Court - the Annual Report of the Montana Medical Legal Panel is published and made available. A part of the duties of the Panel is the gathering of information and data on the "who, what, when & where" of medical malpractice claims. Data referenced but not included in the following is available upon request. If you have received just an Executive Summary, you may obtain – at no charge – a copy of the full report at: <http://www.mmaoffice.org/>

Providers before the Panel include Montana licensed Physicians (and a few tele-medicine Physicians from other states), Dentists, and Podiatrists that reside in Montana or are in active practice in the State, plus Hospitals and specific Long-Term Care Facilities licensed as health care Facilities (home health agencies, government infirmaries not university or college infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, and residential treatment facilities). Dentists were added to the Panel in late 1987 and Podiatrists in late 1997. Except where indicated otherwise, all data pertains to Panel claims filed through December 31, 2005. All post-Panel data is based on attorney reporting forms, clerk of district court surveys and other independent inquiries of the Panel, including Montana Law Week and Montana Supreme Court data through the same date.

1. EXECUTIVE SUMMARY – 1996 Through 2005

The Medical Malpractice Claim Stage	No. Of Providers In Claim Filing Year 2005	Number & Rates Of Providers In Panel Claim Filing Years 1996 - 2005
<p>Appeal Decisions – Medical Malpractice - Montana Supreme Court</p> <p>Ten-Year Average Providers Per Year: 1.6</p>	<p>None (0) from claim filing year 2005 (Year Of Completed Application)</p> <p>(A January, 2006 appellate decision upheld a jury verdict in favor of a Physician and a Hospital – Incident Year 1997 and Filing Year 1999)</p>	<p>A 1994 incident was the last year of incident of a medical malpractice claim in Montana that resulted in an appellate decision by the Montana Supreme Court in 2001. During the time-period, there was no appeal of a jury trial awarding non-economic damages to which the 1995 “Cap” on such damages applied. Montana has the lowest absolute number of such appellate decisions of any State, even with increases in the number of Health Care Providers and amongst the 12 lowest-populated states, the lowest rate of such appeals, whether computed on a population or provider population basis. The states contiguous to Montana have a rate of from 3 to 4 times as many medical malpractice appeals than does Montana. No State comes close to matching Montana’s low of four (4) appellate decisions for the time-period 2000 – 2005, with none from 2002- 2005 & 16 since 1996.</p>
<p>Jury Trials – Medical Malpractice - Large Loss Awards (Greater Than \$ 999,999)</p> <p>Ten-Year Average: 2 Per 10 Years</p>	<p>None (0) from claim filing year 2005</p>	<p>With enactment of the legislative “Cap” on non-economic damages in late 1995, there has been 1 large loss jury verdict to which the “Cap” applied: A jury awarded \$ 1,365,092 against a Hospital in 2005 (2000 incident, claim filed in 2002). The “pain & suffering” were \$ 10,000. In 1998, in a “Pre-Cap” case, a jury verdict for \$ 1,050,000 from incident year 1995 was awarded against a Physician.</p>
<p>Jury Trials</p> <p>Ten-Year Average Providers Per Year: 1.6 - 1.1 Physicians & .4 Hospitals Each Years</p>	<p>None (0) from claim filing year 2005.</p>	<p>The last jury trial was held from filing year 2002. Of claims covered by the “Cap” on non-economic damages, there have been 5 jury trials with 5 Physicians & 2 Hospitals, each prevailing except as to 1 Hospital. In the decade 1996-2005, there were 16 Providers in jury trials (11 Physicians, 4 Hospitals & 1 Dentist). Two jury trials were held in 2005, from earlier claim filing years.</p>
<p>Lawsuits In District Court</p> <p>Ten-Year Average Providers Per Year: 80</p>	<p>12 Providers were in medical malpractice lawsuits from claim filing year 2005.</p>	<p>1996-2005, 782 Health Care Providers were in lawsuits filed in district court (532 Physicians & 189 Hospitals). Montana has one of the lowest rates of medical malpractice lawsuits in the US, whether based on a population or Providers. Providers from filing year 2005 were 10 Physicians and 2 Hospitals.</p>
<p>Medical Malpractice Claims Filed At The Medical Legal Panel</p> <p>Ten-Year Average Claims Per Year: 146</p> <p>Ten-Year Average Providers Per Year: 265</p>	<p>167 claims against 285 Providers were filed in 2005, or as to 6.9% of Montana Providers. As to 23, the claims against them were settled or dropped at Panel before 156 decisions.</p>	<p>1,463 claims for medical malpractice were filed against 2,645 Montana Health Care Providers from 1996 – 2005, or an annual average of 6.3% of the State’s Providers. During the time-period, as to 392 Providers, the claim was dropped, while 119 Providers settled with claimants, 19% of Providers in claims having the claim settled or dropped prior to any Panel hearing. There were 1,312 decisions made by separate Panels. The % of Providers in claims has remained steady; as Provider population increased, the number of claims has increased. A trend of concern in recently-permitted unilateral opting out of an in-person hearing for a decision on the record has emerged.</p>
<p>Paid Medical Malpractice Claims – Number - Physicians & Dentists Only, 1996-2004</p> <p>Average Per Year: 64</p>	<p>40 Physicians & 3 Dentists paid claims to patients in 2004, from various claim filing years.</p>	<p>572 Physician medical malpractice claims involved payment to claimants, 1996 – 2004 (the latest full-state data). That is an average annual 3.4% of Physicians in paid claims. Since 1999, both the absolute number of paid claims and the percentage of Montana Physicians in such claims have annually trended lower, but not always the average amount paid.</p>
<p>Correlation Of Panel & Post-Panel Results</p>	<p>1 Physician where result varied.</p>	<p>Panel & Post-Panel results in closed claims are the same except as to an average of 10 Providers per year, 5 of which were Physicians.</p>

Some Of The Key Trends In Montana Medical Malpractice Claims, Lawsuits, Jury Trials & Appeals - Large Jury Awards And Paid Claims

The previous page, this page and the next page are summary facts and the conclusions drawn from the data that is contained in the balance of the full 2006 Annual Report of the Montana Medical Legal Panel:

APPEALS
ALL HEALTH CARE PROVIDERS - Dramatic Reduction In Number Of Appeals ¹
JURY TRIALS – Large Losses
ALL PROVIDERS – 2 Every 10 Years, 1 Post-“Cap” On Non-Economic Damages Of 1995
JURY TRIALS
PHYSICIANS - Substantial Reduction Since 2000
DENTISTS – Nominal Since Dentists Added To Panel In 1997- Dentist Prevailed In One In 1999
PODIATRISTS - None Since Podiatrists Added To Panel In 1997
OTHER PROVIDERS – Slight Decreasing Rate Of Other Providers In Jury Trials
LAWSUITS
ALL PROVIDERS - Continuing Decrease In Number & Percentage Of Providers In Lawsuits
CLAIMS FILED
PHYSICIANS - Steadily-Declining Proportion Of Physicians In Claims Filed
HOSPITALS - Recent Increasing Proportion Of Hospitals In Claims Filed
PODIATRISTS –Increased Number Of Podiatrists In Claims Filed, With Fewer Podiatrists
CLAIMS FILED – DECISIONS ON THE RECORD
ALL PROVIDERS – Recent Increase In Number Of Decisions On The Record & No Hearing
PAID CLAIMS
PHYSICIANS – Steady Decline In The Number Of Claims Paid To Claimants

THE LAST TEN YEARS OF PROVIDERS IN CLAIM STAGES

Montana Medical Malpractice Claim Data By Provider & Panel Filing Years 1996 - 2005

The last ten years has seen 2,645 Health Care Providers included in claims filed with the Montana Medical Legal Panel. The bulk of those were Physicians (1,797) and Hospitals (655). Of the Providers in claims filed, the claims involving 511 were either Settled or Dropped (Abandoned) before any decision of the Panel was necessary.

Of the remaining Providers in claims, the claims against 120 of them are still pending before the Panel, 119 of them in claims that were filed with the Panel in 2005. Panel decisions by the various Panels – chaired by an Attorney and participated in by 2 other Attorneys and 3 Health Care Providers – took place as to 1,380 Health Care Providers.

Lawsuits (which may or may not lead to a Jury Trial) included 532 Providers and 16 Providers went to a Jury Trial, the Providers winning 14 of them. Claimants won 2 of them. Another 13 Providers obtained an Order from the Judge either summarily winning or having the claim against them dropped. Claimants won in 2 such instances. The Post-Panel Result against 271 Providers is still pending, awaiting final results:

¹ A January 31, 2006 decision – after the coverage of this Report- of the Montana Supreme Court upheld a jury verdict in favor of 1 Physician and 1 Hospital (including nurses who do not come before the Panel), from an incident occurring in 1997 and filed in 1999.

THE LAST TEN YEARS OF PROVIDERS IN CLAIM STAGES						
Montana Medical Malpractice Claim Data By Provider & Panel Filing Years 1996 - 2005						
AT THE PANEL						
Medical Malpractice Claim Stage	Type Providers In Claims With Panel Decision					TOTAL
	Physician	Hospital	Dentist	Facility	Podiatrist	
IN PANEL CLAIMS	1,797	655	77	96	20	2,645
Abandoned Before Decision	264	113	5	9	1	392
Settled Before Decision	74	32	6	6	1	119
In Decision By Panel	1,380	477	60	79	18	2,014
Still-Open At Panel	79	33	6	2	0	120
In Panel Claims	1,797	655	77	96	20	2,645
AFTER THE PANEL						
Medical Malpractice Claim Stage	Type Providers In Claims With Panel Decision					TOTAL
	Physician	Hospital	Dentist	Facility	Podiatrist	
IN POST-PANEL CLAIMS	1,380	477	60	79	18	2,014
Abandoned Or Settled	1,180	392	54	73	13	1,712
In Lawsuit	532	189	18	36	7	782
With Jury Trial	11	4	1	0	0	16
Winning Jury Trial	10	3	1	0	0	14
With Judgment By Judge	11	3	1	0	0	15
Winning Judgment By Judge	9	3	1	0	0	13
With Appeal	0	0	0	0	0	0
In Claims Still Pending	178	78	4	6	5	271
In Post-Panel Claims	1,380	477	60	79	18	2,014
LAST YEAR - PROVIDERS IN CLAIM STAGES						
Montana Medical Malpractice Claim Data By Provider & Panel Filing Year 2005						
AT THE PANEL						
Medical Malpractice Claim Stage	Type Providers In Claims With Panel Decision					TOTAL
	Physician	Hospital	Dentist	Facility	Podiatrist	
IN PANEL CLAIMS	196	69	8	7	5	285
Abandoned Before Decision	20	7	0	2	0	29
Settled Before Decision	3	1	0	0	0	4
In Decision By Panel	95	28	2	3	5	133
Still-Open At Panel	78	33	6	2	0	119
Total In Panel Claims	196	69	8	7	5	285
AFTER THE PANEL						
Medical Malpractice Claim Stage	Type Providers In Claims With Panel Decision					TOTAL
	Physician	Hospital	Dentist	Facility	Podiatrist	
IN POST-PANEL CLAIMS	95	28	2	3	5	133
Abandoned Or Settled	20	5	0	0	0	25
In Lawsuit	10	2	0	0	0	12
With Jury Trial	0	0	0	0	0	0
With Judgment By Judge	0	0	0	0	0	0
With Appeal	0	0	0	0	0	0
In Claims Still Pending	75	23	2	3	5	108
In Post-Panel Claim	95	28	2	3	5	133

2. CLAIM TRENDS - NUMBER & RATE

Filing a medical malpractice or medical liability claim with the Montana Medical Legal Panel is the starting point in the claim process.² Once the Application is filed in proper form, a Patient (or the Representative of a Patient) is entitled to have the claim heard by a Panel of three Attorneys and three Health Care Providers, at no cost to the Patient.

The claim is against one or more of the specified Health Care Providers covered by the Panel.³

Tracking the raw number, rate, trend of claims - and the number of Providers in those claims - is one of the functions of the Panel, which is charged with determining the facts of claimed medical malpractice: The "Who, What, When And Where" of the medical malpractice environment, without identification of the parties involved. For those claims that are not resolved at the Panel stage of the claim process, the Panel also tracks their progress after there is a Panel Hearing.

The raw number of claims and Providers in them is of importance to the Panel in terms of the time and cost of processing these claims and to the Providers, who pay for the cost of the Panel. The rate of those claims - both at and after the Panel - in terms of the percentage of Providers in them and the trend or direction of change of those claims (by the use of four-year "running averages" that removes the year-to-year fluctuations in data - is indicative of the climate of medical malpractice in the State and can be a measure of the level of effectiveness of the Panel. A by-product of the data is that the proportion of Health Care Providers by type of Provider is an important factor in the pricing of medical malpractice insurance.

Trend Of Montana Medical Malpractice Claim Filings, 1996 - 2005

Rate Of Claim Filing Regardless Of The Number Of Providers In Them – Slightly Declining

The absolute number or raw number of claims has increased some 15% from claim filing year 1996 to 2005. But because of increases of 19% in the number of Health Care Providers, the number of claims divided by the number of Providers – the rate of claims – has been a slightly-declining number.

During the claim filing period 1996 - 1999 there was an average annual 138 claims filed, which was 6.32% of all licensed Health Care Providers in Montana. Since then, the trend or number of claims as a percentage of total Providers has slightly drifted downwards with small variations within each four-year time period, culminating in an average annual 158 claims filed - or a rate of 6.28% of Montana's Providers during the 2002-2005 time period.

A similar, small deviation is also noticeable in the annual data, indicating a very stable rate of claims.

² A very few claims are settled directly with Provider insurance carriers or just not further pursued by Patients, without any Panel or Court involvement. The last data available to the Panel indicated that this occurred on average, at least as to Physicians, for about 5 Physicians per year as to carriers insuring approximately 80% of Physicians. Since 1977, there are four claims (involving three physicians and a nursing home) known to the Panel where there was an incident of malpractice that later went to Court but did not first come before the Panel in some fashion. None were in the time-range of this Report. Even with the above, Panel data base is the most comprehensive collection of data on Montana Medical Malpractice claims.

³ "Health Care Providers" for purposes of this Report include: (1) Non-Federal Physicians (Including Telemedicine), Podiatrists, & Dentists licensed in and in active practice in Montana; (2) Licensed Hospitals and statute-defined Long-Term Care Facilities (home health agencies, government infirmaries not university or college infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, and residential treatment facilities.

DATA – NUMBER, RATE & TREND OF CLAIMS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Medical Malpractice Claims Filed With Panel	TREND Rate Of Claims Percentage Of Total Montana Providers
1996-1999	138	6.32%
1997-2000	137	6.17%
1998-2001	140	6.14%
1999-2002	144	6.17%
2000-2003	147	6.09%
2001-2004	151	6.08%
2002-2005	158	6.28%

SELECT ANNUAL			
Panel Claim Filing Year	Number Of Medical Malpractice Claims Filed With Panel	Number Of All Types Of Health Care Providers	Rate Of Claims As A
			Percentage Of Total Montana Providers
1996	145	2,145	6.8%
1997	125	2,150	5.8%
1998	134	2,191	6.1%
1999	147	2,233	6.6%
2000	140	2,274	6.2%
2001	139	2,418	5.7%
2002	150	2,416	6.2%
2003	159	2,548	6.2%
2004	157	2,564	6.1%
2005	167	2,555	6.5%
Total	1,463		
Average	146	2,349	6.2%
% Change	15%	19%	

Many claims have more than one Health Care Provider in them. Typically, a medical malpractice claim involves one or more Physicians or that plus one Hospital. The remaining claims typically involve one Long-Term Care Facility or one Dentist or one Podiatrist. Occasionally two Hospitals will be involved in a claim.

The average number of Providers per claim is nearly 2 Providers per claim, slightly trended upwards for a few years, and culminating with the average number of Providers per claim at a steady rate of 1.7 Providers per claim in recent years, that is, about two Providers per year over time: ⁴

AVERAGE NUMBER OF MONTANA HEALTH CARE PROVIDERS IN MEDICAL MALPRACTICE CLAIMS			
Panel Claim Filing Year	Number Of Medical Malpractice Claims	Number Of Health Care Providers In Claims	Average Number Providers Per Claim
1996	145	248	1.7
1997	125	269	2.2
1998	134	256	1.9
1999	147	238	1.6
2000	140	283	2.0
2001	139	252	1.8
2002	150	269	1.8
2003	159	273	1.7
2004	157	272	1.7
2005	167	285	1.7
TOTAL	1,296	2,360	1.8
AVERAGE	146	265	1.8

Trend Of Providers In Montana Medical Malpractice Claims, 1996 - 2005 Slightly-Declining Proportion Or Rate Of All Health Care Providers In Claims Filed

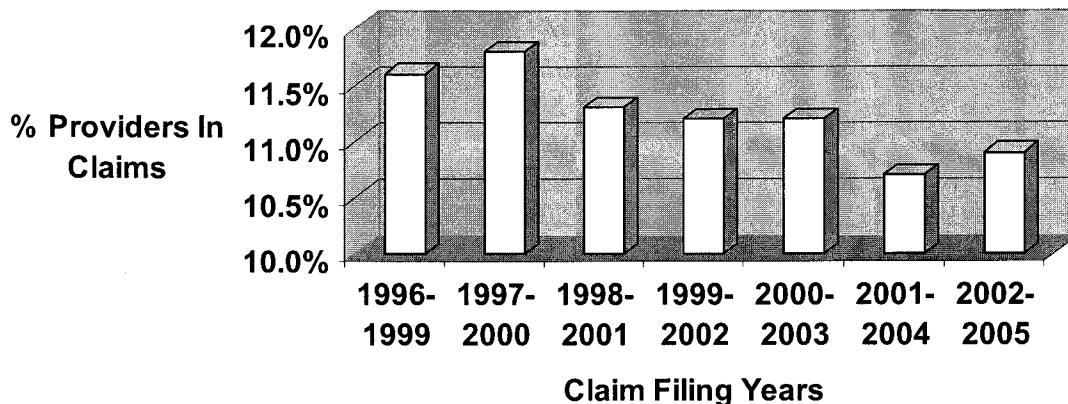
While the absolute number of Health Care Providers in claims for medical malpractice has steadily-increased, the increase in the number of Providers in Montana has out-stripped those numbers. This has resulted in a fairly steady slight decline in the proportion of Providers that are included in claims:

⁴ Providers in claims that proceed to a post-Panel claim stage have a recent rate of 2.3 providers per claim, for attorney reports received from June, 2004 through January, 2006 as to claim filing years 2000 - 2005.

DATA – NUMBER, RATE & TREND OF PROVIDERS IN CLAIMS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Health Care Providers In Claims Filed At The Panel	TREND Rate Of Provider In Claims Percentage Of Total Montana Health Care Providers
1996-1999	253	11.6%
1997-2000	262	11.8%
1998-2001	257	11.3%
1999- 2002	261	11.2%
2000- 2003	269	11.2%
2001- 2004	267	10.7%
2002- 2005	275	10.9%

Average Annual Percentage Of Montana Health Care Providers In Medical Malpractice Claims



Because of their large numbers in claims, the specifics on Physicians and Hospitals are important because those two categories tend to drive the overall averages for Providers as a whole and where the volume of claims is significant enough to discern major trends or directions of change.⁵

⁵ "Health Care Providers" for purposes of this Report include: (1) Non-Federal Physicians (Including Telemedicine), Podiatrists, & Dentists licensed in and in active practice in Montana; (2) Licensed Hospitals and statute-defined Long-Term Care Facilities (home health agencies, government infirmaries not university or college infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, and residential treatment facilities).

Trend Of Physicians In Montana Medical Malpractice Claims, 1996 - 2005

Steadily-Declining Proportion Or Rate Of Physicians In Claims Filed

SUMMARY OF DATA – PHYSICIANS IN CLAIMS

The trend in the number of Physicians in claims - using four-year averages - has consistently trended downward since 1996, from a high of 11.5% of total Physicians to a 2005 rate of 10.0% of the total Physicians. An annual average of 180 Montana Physicians were in medical malpractice claims at the Montana Medical Legal Panel, during the time-period 1996 - 2005. For 2005, that number was 196 Physicians. Neither of these figures takes into account changes in the Physician population.

Increases in the Physician population have - from 1996 - 2005 - outstripped the number of Physicians included in claims, resulting in a steady, downward trend of the proportion or rate of Physicians in malpractice claims, a major factor in medical malpractice insurance rate calculation. Over the time period the number of Physicians in claims grew by 13% and the number of Physicians increased by 30%. While an absolute increase in the number of Providers in claims increases the cost and work of the Panel, from the Providers' perspective, it is the proportion of them that are in claims that affects the cost of medical malpractice insurance.

DATA – NUMBER, RATE & TREND OF PHYSICIANS IN CLAIMS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Physicians In Claims Filed At The Panel	TREND Rate Of Physicians In Claims Percentage Of Total Montana Physicians
1996-1999	174	11.5%
1997-2000	179	11.5%
1998-2001	173	10.8%
1999-2002	174	10.4%
2000-2003	181	10.4%
2001-2004	178	10.0%
2002-2005	184	10.0%
Through December 31, 2005 Panel Data, Montana Non-Federal Physicians In Active Practice (Including Telemedicine). The Four-Year "Rolling" Average Indicates A "Trend" Or Direction Of Change. The Rate Or Percentage Of Physicians In Claims Adjusts For Changes In The Number Of Physicians Over Time And Is One Of The Factors Used In Insurance Rate-Making.		

Physicians accounted for 68% of all Providers in medical malpractice claims, 1996 - 2005. During that same time period, Physicians constituted 71% of all Providers. This relatively close distribution, combined with the reasonably steady but slightly-declining percentage of Physicians in claims is a preliminary indication that medical malpractice claims amongst Physicians are not driven by "pockets" of malpractice involving a few Physicians. Rather, some other factor or factors drive claims.

Although not at the same volume of claims and number of Providers as Physicians, trends can also be seen in the claims data of Hospitals:

Trend Of Hospitals In Montana Medical Malpractice Claims, 1996 - 2005

Recent Increasing Proportion Of Hospitals In Claims

SUMMARY OF DATA – HOSPITALS IN CLAIMS

The trend in the number of Hospitals in claims - using four-year averages - has edged upwards from the 2000-2003 time period of an average of 64 Hospitals in claims per year, to an average of 71 per year in the 2002-2005 years. Since 1996, there has been a 28% increase in the number of Hospitals in claims.

An annual average of 66 Montana Hospitals per year were included in medical malpractice claims at the Montana Medical Legal Panel, during the time-period 1996 - 2005. For 2005, 69 Hospitals were a party in such a claim before the Montana Medical Legal Panel. The number of Hospitals is very constant, and the rate or percentage of Hospitals in claims has increased since the 2000-2003 time-period. There are an almost-fixed, limited number of Hospitals in Montana. Because of the rate at which Hospitals are included in claims, the number of Hospitals in claims always tends to slightly exceed the number of Hospitals in the state. This provides a proportion greater than 100% and indicating that some Hospitals in any one four-year period have more than 1 claim against them.

DATA – NUMBER, RATE & TREND OF HOSPITALS IN CLAIMS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Hospitals In Claims Filed At The Panel	TREND Rate Of Hospitals In Claims Percentage Of Montana Hospitals
1996-1999	64	106.3%
1997-2000	66	109.2%
1998-2001	64	106.7%
1999-2002	65	108.8%
2000-2003	64	105.8%
2001-2004	68	111.6%
2002-2005	71	116.5%

DATA – NUMBER, RATE & TREND OF OTHER PROVIDERS IN CLAIMS

As to other Providers, because claim numbers involving them are much lower than Physicians and Dentists, trends are difficult to discern. Without regard to changes in the number of Providers, the annual data for all Providers is as follows:

HEALTH CARE PROVIDERS IN CLAIMS FILED AT THE MONTANA MEDICAL LEGAL PANEL (OPEN & CLOSED AT THE PANEL)						
Panel Claim Filing Year	Number Health Care Providers	Number In All Claims At The Montana Medical Legal Panel				
		Physicians	Hospitals	Long-Term Care Facilities	Dentists	Podiatrists
1996	2,145	174	54	10	10	0
1997	2,150	194	62	6	7	0
1998	2,191	174	69	8	5	0
1999	2,233	155	70	9	3	1
2000	2,274	192	61	19	9	2
2001	2,418	172	56	12	9	3
2002	2,416	176	74	5	8	6
2003	2,548	182	64	10	15	2
2004	2,564	182	76	10	3	1
2005	2,555	196	69	7	8	5
TOTAL		1,797	655	96	77	20
AVERAGE	2,349	180	66	10	8	2

The above table does not directly compute the rate of change because of changes in the number of providers. Increased provider numbers typically produces a lower annual rate than the absolute numbers shown above. Podiatrists were first added to the Panel in late 1997, as to claims where the incident occurred on or after October 1, 1997. The first such claim was filed in 1999. Dentists were earlier added to the Panel as to incidents occurring on or after October 1, 1987. The number of Providers in open claims at the Panel as of December 31, 2005 was: Physicians (79), Hospitals (33), Dentists (6), Podiatrists (0), Facilities (2).

3. LAWSUIT TRENDS - NUMBER & RATE

The filing of a lawsuit for medical malpractice against a Health Care Provider is the first stage in litigation after the Montana Medical Legal Panel. It doesn't mean that there will or won't be a trial. The fact of a lawsuit – because of the costs connected to one and the potential for further proceedings – is one of the factors in the pricing of medical malpractice insurance.

The summary data below compares the rate or percentage of Physicians in lawsuits with and without the Panel, using Physicians as an example. Physicians are the only Providers for whom comparative data is available prior to the existence of the current Panel. As one of the primary purposes of the Panel is to reduce litigation, i.e. to reduce the number of lawsuits filed, the data provides a strong indication of the relationship between the existence of the Panel and the achievement of that particular goal: ⁶

THE RATE OF MONTANA PHYSICIANS IN MEDICAL MALPRACTICE LAWSUITS BEFORE AND AFTER THE PRESENCE OF THE CURRENT PANEL	
Type Of Providers In Medical Malpractice Claims	% Of Physicians In Medical Malpractice Claims Also In Later Lawsuits (Number In Suits Divided By Number In Panel Claims)
Montana - No Panel	
Montana 1967 -1969: No Panel, Voluntary Or Mandatory - PHYSICIANS In Claims: Montana, July, 1967 - December, 1969, Fulton Survey, Prior To Voluntary And Mandatory Panel - With Subsequent Lawsuit	71%
Montana 1977: No Panel, Voluntary Or Mandatory - PHYSICIANS In Claims: Claims Closed At the Panel After Abolition Of Voluntary Panel And Before Any Claims Closed In Mandatory Panel, Montana, Claims Closed, 1977 - With Subsequent Lawsuit - Montana Insurance Commissioner Records	51%
Montana - Current Mandatory Entry Panel - Non-Binding Result - Results Not Admissible In Subsequent Proceeding	
Montana 1977 - 2005: PHYSICIANS In Claims: Claims Closed At The Panel, 1977 - 2005 - With Subsequent Lawsuit	30%
Montana 1996 - 2005: PHYSICIANS In Claims: Claims Closed At The Panel, 1996 - 2005 - With Subsequent Lawsuit	31%
Panel data, 1996 - 2005. 1967-1969 data. Data 1967 - 1972 from May, 1973, <i>Rocky Mountain Medical Journal</i> , "The Medicolegal Screening Panel", A. M. Fulton, MD. Data for 1977 from Annual Statements of insurance carriers, office of the Insurance Commissioner of Montana. The rate of Physicians in claims that also were in later lawsuits differs from the rate of all Physicians who end up in a lawsuit. For 1996-2005, 3.3% of Montana's Physicians were in a lawsuit for medical malpractice. For 1977 - 2005 that figure was 3.1%.	

⁶ As yet, the impact on the rate of post-Panel lawsuits is not fully-known from a recent change in Panel Rules. That Rule change permits the parties' to unilaterally have a decision of the Panel on written records alone versus holding an in-person or telephonic hearing with the presence of the parties' and the taking of testimony. See Section 7 and "The Use Of Decisions On The Record Without Hearing".

Trend Of Health Care Providers In Medical Malpractice Lawsuits, 1996 - 2005

Steadily-Declining Proportion Of Health Care Providers In Lawsuits

In 2000, a high was reached in both absolute number of Providers in lawsuits and as a proportion of increasing numbers of Health Care Providers. After that, the number and proportion of Providers sued in court has steadily declined, except that the year 2005 must be viewed with caution, as not all 2005 claims have been processed through the Panel nor has the decision to sue or not sue been made on each claim. A total of 120 Provider's claims were – as of December 31, 2005 – at the Panel, all but one of which was from a filing in 2005.

DATA – NUMBER, RATE & TREND OF PROVIDERS IN LAWSUITS

As with the numbers of Providers in claims, the number of Dentists, Podiatrists, and Long-Term Care Facilities in filed lawsuits is of such a small number that the direction of change is difficult to determine.

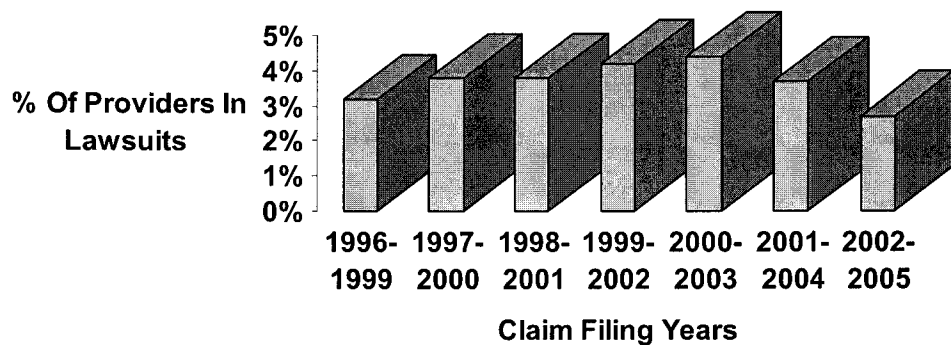
However, except for an “up tick” in the number of lawsuits involving Physicians and Facilities in 2000 and Dentists during 2003, the annual data indicates a downward trend in the number of lawsuits from about 2000 onwards. The Number Of Health Care Providers included for each year so that account can also be taken of the often-increasing numbers of Providers. When the noted annual trend of decline is compared with the increased number of Providers, the proportion of Providers in lawsuits correspondingly diminishes:

Health Care Providers In Lawsuits After The Panel						
Panel Claim Filing Year	Number Health Care Providers	Number In Lawsuits - Claims Closed At Panel				
				Long-Term Care Facilities		
		Physicians	Hospitals		Dentists	Podiatrists
1996	2,145	49	17	1	1	0
1997	2,150	63	22	2	1	0
1998	2,191	48	15	2	1	0
1999	2,233	39	16	4	1	0
2000	2,274	82	26	12	1	0
2001	2,418	66	27	5	2	2
2002	2,416	68	29	1	4	3
2003	2,548	61	22	4	7	1
2004	2,564	46	13	5	0	1
2005	2,555	10	2	0	0	0
TOTAL		532	189	36	18	7
AVERAGE	2,349	53	19	4	2	1
A number of claims filed before the Panel in 2005 are still open. Not enough time has passed for the lawsuit numbers to be fully-developed for that year and so the data for that year has limited significance except when viewed as part of a combination of years.						

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Health Care Providers In Lawsuits After The Panel	Rate Of Health Care Providers In Lawsuits Percentage Of Montana Health Care Providers
1996-1999	71	3.2%
1997-2000	84	3.8%
1998-2001	87	3.8%
1999- 2002	97	4.2%
2000- 2003	106	4.4%
2001- 2004	92	3.7%
2002- 2005	69	2.7%

In the above Table and the following Chart, a number of claims filed before the Panel in 2005 are still open. Not enough time has passed for the lawsuit numbers to be fully-developed for that year and so the data for that year has limited significance except when viewed as part of a combination of years.

AVERAGE ANNUAL PERCENTAGE OF MONTANA PROVIDERS IN MEDICAL MALPRACTICE LAWSUITS



Trend Of Hospitals In Montana Medical Malpractice Lawsuits, 1996 - 2005

Recent Decline From High In 2002 - Hospitals In Lawsuits

After a 2002 high of the number of lawsuits involving Hospitals, the trend has been downward from the time-period of claim filings for 2001-2004:

DATA – NUMBER, RATE & TREND OF HOSPITALS IN LAWSUITS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Hospitals In Lawsuits After The Panel	Rate Of Hospitals In Lawsuits Percentage Of Montana Hospitals
1996-1999	18	29.2%
1997-2000	20	32.9%
1998-2001	21	35.0%
1999- 2002	25	40.8%
2000- 2003	26	43.2%
2001- 2004	23	37.6%
2002- 2005	17	27.2%

Trend Of Physicians In Montana Medical Malpractice Lawsuits, 1996 - 2005

Recent Decline From High In 2000 - Physicians In Lawsuits

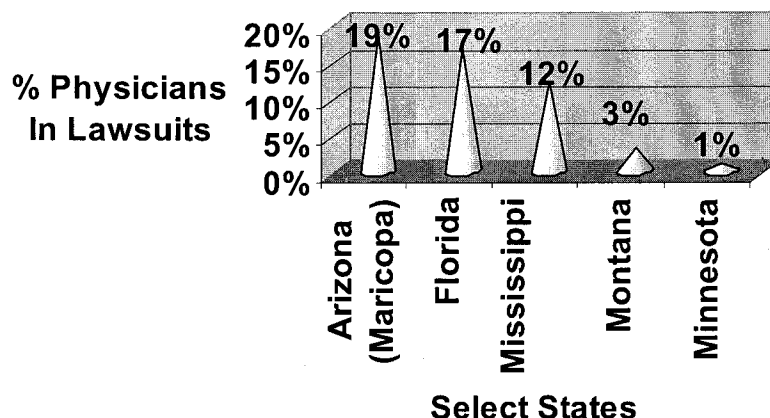
After a 2000 high of the number of lawsuits involving Physicians, the trend has been downward from the time-period of claim filings for 2001-2004:

DATA – NUMBER, RATE & TREND OF PHYSICIANS IN LAWSUITS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Physicians In Lawsuits After The Panel	Rate Of Physicians In Lawsuits Percentage Of Montana Physicians
1996-1999	50	3.3%
1997-2000	58	3.7%
1998-2001	59	3.7%
1999- 2002	64	3.8%
2000- 2003	69	4.0%
2001- 2004	60	3.4%
2002- 2005	46	2.5%

Although comparable data is hard to come by, all available data indicates that Montana is amongst those states with the lowest proportion of lawsuits in medical malpractice claims against Physicians. The following indicates the US rate of lawsuits plus the five states with the highest and lowest rate of lawsuits:

AVERAGE ANNUAL PERCENTAGE OF PHYSICIANS IN MEDICAL MALPRACTICE LAWSUITS - Year 2002



Average Annual Percentage Of Physicians In Medical Malpractice Lawsuits

State, Time Period & Number Of Medical Liability Lawsuits Against Physicians	Average Annual Number Of Lawsuits	Number Or Average Number Of Physicians	Average Annual Percentage Of Physicians In Lawsuits
Arizona (Maricopa Co) - 2002 (462)	462	2,500	18.5%
Florida - 2002 (5,925)	5,925	35,551	16.7%
United States - 2000 (86,480)	86,480	631,431	14.0%
California - 1998 (10,071)	10,071	80,703	12.5%
Mississippi - 2002 (550)	550	4,533	12.1%
Ohio - 2003 (2,490)	2,490	24,833	10.0%
Pennsylvania - 2001 (1,160)	1,160	39,024	3.0%
Montana - 2001 (66)	66	1,730	3.8%
Montana - 1977 - 2005 (1,126)	39	1,251	3.1%
Montana - 1996 - 2006 ()	53	1,673	3.2%
Montana - 2002 (68)	68	1,729	3.2%
Montana - 1998 (48)	48	1,500	2.8%
Montana - 1996 - 2002 (415)	59	1,590	2.6%
Colorado - 1996 - 2000 (1,000)	200	9,914	2.0%
Connecticut - 2001-2002 (368)	184	11,859	1.6%
Minnesota - 2002 (127)	127	12,125	1.0%

Montana Medical Legal Panel, from data obtained through December 31, 2005 for Montana and nationally through January 23, 2005. Some states have multiple sources; the most credible, lowest rate was selected. The sources of the data are available, along with the balance of the states. The absolute number of such lawsuits is indicated in parenthesis beside each state. Similar data is not available for other types of health care providers. The precise rank of Montana is dependent upon the comparative years used.

4. JURY TRIAL TRENDS, SUMMARY JUDGMENT & DISMISSAL⁷

The Judge Granting Summary Judgment Or Dismissal Of Suit – A Result Without Any Jury Trial

Sometimes, the Judge in a court case rules before the jury ever gets the case. That can be in a circumstance where the Health Care Providers files papers to dismiss the case as not having been providently filed. Or – because the jury considers facts – where there is no major dispute as the facts, the Judge can rule who is entitled to entry of a final judgment based on application of the law. That occurred as to 15 Providers in the filing years 1996 – 2005: Once as to a Dentist in a 1996 claim year and 3 times as to Hospitals, each of whom prevailed. Physicians were successful as to 9 of 11 such ventures:

Successful Motions For Dismissal By Provider Or Motions For Summary Judgment By Either The Claimant Or The Provider				
Filing Year	Hospital	Physician	Dentist	Claimant
1996	0	7	1	1
1997	0	0	0	0
1998	0	1	0	1
1999	0	0	0	0
2000	2	0	0	0
2001	1	1	0	0
2002	0	0	0	0
2003	0	0	0	0
2004	0	0	0	0
2005	0	0	0	0
TOTAL	3	9	1	2

Trials Before A Jury

The data from claim filing years 1996 – 2005 goes from 2,645 Health Care Providers in medical malpractice claims, to 782 Providers in lawsuits, 13 Providers dropped from lawsuits by the Judge, and then to 16 Providers in jury trials.

The result is an "inverse pyramid" of how claims are winnowed away by the claims being dropped, dismissed or settled - either at or after the Panel and then either before or after a lawsuit, culminating in a jury trial where there is no other resolution of the claim. The composition of the Providers going to jury trial during the time period are as follows: 11 Physicians, 4 Hospitals and a Dentist. Those 16 Providers were included in ten (10) jury trials during the time-period, or an average of 1 jury trial per year over that decade. But none have been reported since claim filing year 2002.⁸

⁷ A January 31, 2006 decision of the Montana Supreme Court upheld a jury verdict in favor of 1 Physician and 1 Hospital (including nurses who do not come before the Panel), from an incident occurring in 1997 and filed in 1999. That earlier jury trial of 2004 is included in the data below.

⁸ Claim filing years are distinguished from when trials occur. Two jury trials were held in 2005, but from earlier claim filing years.

Trend Of Health Care Providers In Medical Malpractice Jury Trials, 1996 - 2005

Steadily-Declining Proportion Of Health Care Providers In Jury Trials

The trend or direction of change of the data – taking into account the changes in the number of Providers – shows a decline in jury trials. Both the absolute number and proportion of Providers ending up in a civil courtroom for a jury trial has declined over the years. Other than a 1999 filing year trial for a Dentist – the Dentist prevailing before the jury - the trials have involved Physicians and Hospitals.

DATA – NUMBER, RATE & TREND OF All PROVIDERS IN JURY TRIALS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Providers In Jury Trials After The Panel	TREND Rate Of Providers In Jury Trials
		Percentage Of Total Montana Providers
1996-1999	2	0.10%
1997-2000	3	0.14%
1998-2001	3	0.12%
1999-2002	3	0.13%
2000-2003	2	0.07%
2001-2004	1	0.03%
2002-2005	1	0.02%

Trend Of Physicians In Montana Medical Malpractice Jury Trials, 1996 - 2005

Substantial Reduction Since 2000 In Jury Trials

Physicians accounted for 73% of all Montana Health Care Providers that resulted in a medical malpractice jury trials, 1996 - 2005. During that same time period, Physicians constituted 71% of all Providers.

Although working from an already-small base of a high of three jury trials in claim filing years 1999 and 2000, the trend of Physicians in jury trials has dropped since 2000, with no jury trials in claim filing years 2003 – 2005. While absolute numbers are important, when viewed in the context of generally-increasing numbers of Physicians the trend – as a percentage of all Montana Physicians – shows the change to be more substantial. It is the percentage of Physicians, say in a particular carrier selling medical malpractice insurance, that is a factor in the pricing of the insurance.

DATA – NUMBER, RATE & TREND OF PHYSICIANS IN JURY TRIALS

Panel Claim Filing Years	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Physicians In Jury Trials After The Panel	Rate Of Physicians In Jury Trials Percentage Of Montana Physicians
1996-1999	1.5	0.10%
1997-2000	2.0	0.13%
1998-2001	2.0	0.12%
1999- 2002	2.0	0.12%
2000- 2003	1.3	0.07%
2001- 2004	0.5	0.03%
2002- 2005	0.3	0.01%

DATA – NUMBER OF ALL PROVIDERS IN JURY TRIALS

The low volume of non-Physician Providers in jury trials makes difficult the determination of any trend, except to note the lack of jury trials reported for claim filing years 2003 - 2005:

MONTANA MEDICAL MALPRACTICE JURY TRIALS						
Health Care Providers In Jury Trials After The Panel						
Panel Claim Filing Year	Number Health Care Providers	Number In Jury Trials - Claims Closed At Panel				
		Physicians	Hospitals	Long-Term Care Facilities	Dentists	Podiatrists
1996	2,145	1	0	0	0	0
1997	2,150	1	1	0	0	0
1998	2,191	1	0	0	0	0
1999	2,233	3	1	0	1	0
2000	2,274	3	1	0	0	0
2001	2,418	1	0	0	0	0
2002	2,416	1	1	0	0	0
2003	2,548	0	0	0	0	0
2004	2,564	0	0	0	0	0
2005	2,555	0	0	0	0	0
TOTAL		11	4	0	1	0
AVERAGE	2,349	1.1	0.4	0.0	0.1	0.0
Podiatrists were first added to the Panel in late 1997. A number of claims filed before the Panel in 2004-05 has not yet been closed post-Panel and not enough time has passed for the jury trial numbers to have been fully-developed for those years, especially 2005.						

5. APPEALS FROM STATE DISTRICT COURT TO THE MONTANA SUPREME COURT BY PROVIDER TYPE

An aggrieved party before a Judge or Jury can appeal their case to the Montana Supreme Court. Given that the above data reflects small numbers of jury trials and a rate that is declining, this data should be reflected in a lessening of cases that go to Montana's highest court.

Trend Of Providers In Montana Medical Malpractice Appeals, 1996 - 2005

Dramatic Reduction In Number Of Appeals & Providers In Appeals

SUMMARY OF DATA – APPEALS OF MEDICAL MALPRACTICE CASES

A review of medical malpractice appellate decisions in other states indicates that no other state has as low an absolute number of appeals as Montana, especially in the past 5 years. No State comes close to matching Montana's low of four (4) medical malpractice appellate decisions for the time-period 2000 – 2005, with none from 2002 through 2005.

From 2000, the Montana Health Care Provider population has increased by over 6%, but both its rate of appeals per 100,000 Population of .4 appeals and its rate of appeal per 1,000 Health Care Providers is unequaled in the 12 lowest-population states that are under 1.7 Million people. Each of those states except Montana had medical malpractice appeals in either 2004 or 2005 or both. The states contiguous to Montana have rates of appeals of from 3 to 4 times Montana's on a per 1,000 Health Care Provider basis.

The rate of appeals to the Montana Supreme Court is an element of the cost of carriers defending such claims, and from the Provider's perspective is hence an element of the cost of medical malpractice insurance. The general absence of appeals is a very preliminary indicator of either a low level of law suits and jury trials, except that a high level of settlements showing in paid claims would not be reflected in the data.

The last year of incident of a medical malpractice case decided and reported by the Montana Supreme Court through 2005 was in 1994, in a 2000 decision. In 2005, the "Cap On Non-Economic Damages" was enacted for medical malpractice claims. In 2001, an unreported decision was issued in an appeal for an incident that occurred in 1992.⁹ Since the 1977 institution of the Montana Medical Legal Panel, there have been 44 medical malpractice decisions – both reported and unreported – by the Montana Supreme Court which progressed through the Panel, litigation and on to the Court, which is an average of 2.7 providers per year in each appeal.

On a Provider basis for those appeals, there were 60 Physicians (13% coming from one claim), 17 Hospitals, 1 dentist and 1 long-term care facility involved in appellate decisions in Montana – a total of 80 Health Care Providers. The rate of Health Care Providers involvement in such appeals was an average of 3.4% of providers per year. About 60% of the 44 appeals involved just one or more Physicians, 12% of them just Hospitals. Another 28% of them were with one or more Physicians and a Hospital (including 1 also with a Facility). The sole Dentist appeal involved just a Dentist.

⁹ A January 31, 2006 decision – after the coverage of this Report- of the Montana Supreme Court upheld a jury verdict in favor of 1 Physician and 1 Hospital (including nurses who do not come before the Panel), from an incident occurring in 1997 and filed in 1999.

DATA – APPEALS OF MEDICAL MALPRACTICE CASES

THE LAST FOUR MONTANA SUPREME COURT APPEALS ¹⁰					
DECISIONS IN 2000-2001 FROM CLAIM FILING YEARS 1994-1995 AND INCIDENT YEARS 1992-1994					
Year Of Claimed Incident	Panel Claim Filing Year	Year Of Decision	Number Of Physicians In Appeal	Number Of Hospitals In Appeal	Supreme Court Ruling
1992	1994	2000	0	1	AGAINST 1 HOSPITAL - Overruled District Court Ruling In Favor Of Hospital And Sent Back To District Court For Further Action Consistent With Decision
1992	1995	2001	1	1	FOR 1 HOSPITAL - FOR 1 PHYSICIAN - Upheld District Court Ruling On Summary Judgment (Before Any Jury Trial) That Was In Favor Of Health Care Providers)
1994	1995	2000	2	0	AGAINST 2 PHYSICIANS - Reversal Of District Court Jury Trial And Sent Back To District Court For New Jury Trial
1992	1995	2000	3	1	FOR 1 PHYSICIAN - AGAINST 2 PHYSICIANS - AGAINST 1 HOSPITAL - Upheld District Court Ruling On Summary Judgment (Before Any Jury Trial) That Was In Favor Of 1 Physician) - Overruled District Court Ruling On Summary Judgment (Before Any Jury Trial) That Was In Favor Of 2 Physicians And 1 Hospital And Sent Back For Further Action.
TOTAL			6	3	

As one would expect, low-population states would have fewer court cases and hence those states would likely have fewer appeals. Amongst the 12 lowest-population states, Montana – from cases decided in the years 2000 – 2005 – not only had the lowest absolute number of appeals but also the lowest rate of appeals whether determined on a general population basis or on the basis of the number of Health Care Providers:

¹⁰ A January 31, 2006 decision – after the coverage of this Report- of the Montana Supreme Court upheld a jury verdict in favor of 1 Physician and 1 Hospital (including nurses who do not come before the Panel), from an incident occurring in 1997 and filed in 1999.

**LOW-POPULATION STATES - NUMBER AND RATE OF SUPREME COURT
APPEALS IN MEDICAL MALPRACTICE CASES, DECIDED 2000 - 2005**

State	Number Decisions	Rate Of Appeals Per 100,000 General Population	Rate Of Appeals Per 1,000 Health Care Providers
Montana	4	0.4	1.5
Rhode Island	7	0.7	1.6
New Hampshire	9	0.7	2.1
Maine	11	0.9	2.3
Hawaii	13	1.1	2.7
Vermont	8	1.3	3.0
Wyoming	5	1.0	3.9
South Dakota	10	1.3	4.6
Idaho	16	1.2	4.7
North Dakota	12	1.9	6.0
Alaska	16	2.5	8.2
Delaware	23	2.8	8.6

"Health Care Providers" includes physicians, hospitals, dentists and nursing homes. Sources: Number of cases on appeal, Supreme Court web sites of various states. General population and provider population for 2004, Kaiser Foundation, <http://www.statehealthfacts.org>. The above states each have less than 1.7 Million people.

By type and number of Providers in the appeal of medical malpractice cases, all of such Providers were either Physicians or Hospitals from the Supreme Court decision Year 2000 – 2005:

**Number Of Appeals And Health Care Providers In Appeals In Montana Medical
Malpractice Cases: 2000 Through 2005**

Supreme Court Decision Year	Providers In Appeals	Physicians	Hospitals	Dentists	Podiatrists	Long-Term Care Facilities	Number Appeals
2000	7	5	2	0	0	0	3
2001	3	1	1	0	0	0	1
2002	0	0	0	0	0	0	0
2003	0	0	0	0	0	0	0
2004	0	0	0	0	0	0	0
2005	0	0	0	0	0	0	0
TOTAL	10	6	3	0	0	0	4

6. JURY VERDICTS, LARGE-LOSS JURY VERDICTS & PAID MEDICAL MALPRACTICE CLAIMS BY PROVIDER TYPE

Prevailing Party In Jury Trials

The relative rate of success of Providers at jury trial is reflected in the following inventory for Physicians and Hospitals (the one other involving a Dentist, with whom the Jury sided): Physicians won 91% of jury trials and Hospitals won 75% of jury trials. Where a Physician or Hospital has fewer results in their favor than Physicians or Hospitals in trial, the difference is the number of instances where the Patient or representative of the Patient prevailed in the jury trial as to that Provider: ¹¹

MONTANA MEDICAL MALPRACTICE JURY TRIALS 1996 - 2005 NUMBER OF TRIALS, NUMBER OF PHYSICIANS & HOSPITALS IN TRIALS AND PREVAILING PARTIES						
Year Of Panel Filing	Jury Trial Number	Physicians In Trial	For Physicians	For Hospitals		Number Of Trials
			Result Of Trial	Hospitals In Trial	Result Of Trial	
1996	1	1	1	0	0	1
1997	2	1	1	1	1	1
1998	3	1	0	0	0	1
1999	4	2	2	1	1	1
1999	5	1	1	0	0	1
2000	6	1	1	0	0	1
2000	7	2	2	1	1	1
2001	8	1	1	0	0	1
2002	9	1	1	0	0	1
2002	10	0	0	1	0	1
2003	--	0	--	0	--	0
2004	--	0	--	0	--	0
2005	--	0	--	0	--	0
TOTAL		11	10	4	3	10
AVERAGE		1.1	1.0	0.4	0.3	1.0
% Physicians Prevailing			90.9%			
% Hospitals Prevailing					75.0%	

¹¹ As to those cases that have recorded a result as to a judge decision or a jury decision, the final result can change if the case is appealed to the Montana Supreme Court and a different result occurs as a result of that decision. None of the above cases involved an appeal to the Montana Supreme Court and none of the cases as having been decided by a judge involved an appeal.

Large-Loss Jury Verdicts

For purposes of this Report, a "Large Loss" from the Provider's perspective (insurance terminology, as it is a "Large Gain" for the Patient) is defined as \$ 1,000,000 or more in dollars paid to the Patient or the Patient's Representative.

Since 1977, there have been 3 Physicians and 2 Hospitals in as many claims where the jury verdict was \$ 1 Million or more.

During claim filing years 1996 - 2005, one of those claims involving a Hospital was the first claim that was encompassed by the "Cap" on non-economic damages enacted in 1995. The damage award of \$ 1,365,092 included \$ 10,000 in non-economic damages or "Pain and Suffering".

Reported Jury Verdicts Against Montana Health Care Providers In Excess Of \$ 999,999 - Claim Filing Years 1977 - December 31, 2005						
Case No.	Claim Filing Year	Incident Year	Trial Year	Jury Result For Claimant	Appeal	Final Result For Claimant
Pre-"Cap" On Non-Economic Damages - Incident Before October 1, 1995						
1	1983	1980	1995	Against 1 Hospital \$ 3,048,042	No Appeal	Against 1 Hospital
2	1989	1988	1991	Against 1 Physician \$ 2,000,000	Appeal - Verdict Upheld	Against 1 Physician
3	1989	1989	1992	Against 1 Physician \$ 1,800,000	Not Appealed	Against 1 Physician
4	1998	1995	2003	Against 1 Physician \$ 1,050,000	Not Appealed	Against 1 Physician
Post-"Cap" On Non-Economic Damages - Incident After September 30, 1995						
5	2002	2002	2005	Against 1 Hospital \$ 3,048,042	No Appeal	Against 1 Hospital
Attorney reporting forms, Panel follow-up and independent investigations, including data based on reports of district court and Supreme Court cases in <i>Montana Law Week</i>, 1988 - December 31, 2005; 1977 - December 31, 2005 from reported Supreme Court cases.						

The total amounts paid to Claimants from 1996 - 2005 was \$ 2,414,092 or an annual average amount of \$ 241,409 for Physician and Hospital Large Losses. That translates into \$ 139.28 annually per Provider (Physicians and Hospitals).

There are other Large Losses paid in settlement, only available to the Panel for Physicians for a limited number of years. As to the two Physician-owned carriers in Montana, for the claim incident years (year of alleged malpractice) 1995-2000, there were three separate Physician claims that involved these settlement payments: \$ 1,000,000 (2 Physicians each) and \$ 1,250,000 (1 Physician).¹²

¹² Data submitted by Utah Medical Insurance Association and Doctors Company of California. One other case resolved in 2003 may have similarly involved a Large Loss, but the details are not available to the Panel.

Paid Medical Malpractice Claims

The number of paid claims - any amounts paid to claimants, whether by settlement or jury trial - are tracked by the National Practitioner Data Bank as to Physicians and Dentists.¹³

Trend Of Physicians In Montana Medical Malpractice Paid Claims, 1996 - 2004

Steady Decline In The Number Of Claims Paid To Claimants

Both the absolute number of Montana Physician medical malpractice paid claims and the rate of those paid claims (the percentage of Physicians with paid claims during a period of increasing numbers of Physicians) continues a steady decline from a high in 1999 of 93 paid claims. For 2004 that number was 40 paid claims, with an annual average of 64 paid claims, 1996 - 2004. The trend in the number of paid medical malpractice claims for Physicians is - from the 1999 - 2002 time period of claim filings in a steady downward direction. This decline in paid medical malpractice claims corresponds to the similar decline in the rate of Montana Physician medical malpractice claims, lawsuits, jury trials and appeals to the Montana Supreme Court.

DATA – NUMBER, RATE & TREND OF PHYSICIANS IN PAID CLAIMS

Calendar Year Of Payment	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Physicians In Paid Claims (Number Of Paid Claims)	TREND Rate Of Physicians In Paid Claims Percentage Of Total Montana Physicians
1996-1999	68	4.5%
1997-2000	68	4.4%
1998-2001	71	4.4%
1999-2002	73	4.4%
2000-2003	66	3.8%
2001-2004	59	3.3%
National Practitioner Data Bank		

¹³ The data from the National Practitioner (NPDB) has a "time-lag" in availability. Just after the first of each year, the data for the two years prior to that is made available. Thus, on January 2, 2006, the data was made available for the year 2004 (with earlier years available back to 1996 on the NPDB website at: <http://www.npdb-hipdb.com/annualrpt.html>). The NPDB shows the number of *paid claims* (at least \$ 1 paid to the claimant), by state for Physicians and Dentists only. The NPDB data is as to the year the claim was paid, regardless of the date of filing of the claim, either before the Montana Medical Legal Panel or, if so, filed, in district court. As to Physicians only, the amount of paid claims is available also, by mean and median amount, and by state. With that data and the number of paid claims the amount of paid claims can be determined. By April of each year, starting with 2006, data will be available from authorized and admitted Montana medical malpractice carriers on a wide variety of matters, on a calendar year basis. Not available will be the data from unauthorized or non-admitted carriers or "captive" carriers.

SELECT ANNUAL			
Calendar Year Of Payment	Number Of Montana Physicians In Paid Claims (Number Of Paid Claims)	Number Of Montana Physicians	Rate Of Physicians In Paid Claims
			Percentage Of Total Montana Physicians In Active Practice
1996	64	1,475	4.3%
1997	58	1,500	3.9%
1998	55	1,500	3.7%
1999	93	1,567	5.9%
2000	67	1,628	4.1%
2001	69	1,730	4.0%
2002	64	1,729	3.7%
2003	62	1,848	3.4%
2004	40	1,844	2.2%
Total	572		
Average	64	1,647	3.9%
% Change	-38%		

Trend Of Dentists In Montana Medical Malpractice Paid Claims, 1996 - 2004
Annually Fluctuating Within A Narrow Range, And Steady As A Trend

When viewed in four-year increments, the trend in paid claims for Dentists is very steady. On an annual basis, Dentists had a high during 2002, with an average of 4 paid claims per year, 1996 - 2004.

DATA – NUMBER, RATE & TREND OF DENTISTS IN PAID CLAIMS

Calendar Year Of Payment	TREND - ANNUAL 4-YEAR "ROLLING" AVERAGE	
	AVERAGE ANNUAL	
	Number Of Montana Dentists In Paid Claims (Number Of Paid Claims)	TREND Rate Of Dentists In Paid Claims Percentage Of Total Montana Dentists
1996-1999	4	0.9%
1997-2000	4	0.8%
1998-2001	4	0.8%
1999-2002	5	1.0%
2000-2003	4	0.9%
2001-2004	4	0.8%

SELECT ANNUAL			
	Number Of Montana Dentists In Paid Claims (Number Of Paid Claims)	Number Of Montana Dentists	Rate Of Physicians In Paid Claims
Calendar Year Of Payment			Percentage Of Total Montana Dentists In Active Practice
1996	5	478	1.0%
1997	4	459	0.9%
1998	3	459	0.7%
1999	5	449	1.1%
2000	3	434	0.7%
2001	4	469	0.9%
2002	7	469	1.5%
2003	2	480	0.4%
2004	3	491	0.6%
Total	36		
Average	4	465	0.9%
% Change	-40%		

Trend Of Amount Of Montana Medical Malpractice Paid Claims, Physicians, 1996 - 2004
Downward Trend In Amounts Paid, Average Amount Paid Per Physician & Upward Trend In Average Amount Of Paid Claims

The trend of the amount of paid claims for Physicians is trending downward, as is the average amount of paid claims per Physician, after amounts for claim filing year 2003 having been extra-ordinarily large.

The average amount of paid claims per physician in a particular carrier is an important factor in rate-making for medical malpractice insurance. The average size or amount of paid claims, however, is trending upwards.

That number, where the number of paid claims continues on a sufficient downward trend, is not a factor in rate-making, as it is the total amount paid divided by the number of Physicians that is the determining factor. However, it is a factor in the overall analysis of the "Who, What, When And Where" Of medical malpractice claims.

There is anecdotal evidence that the "Cap" on non-economic damages is sometimes considered a "floor" rather than a "ceiling" and any full exploration of the issue would involve more analysis.

PHYSICIAN PAID CLAIMS - TREND IN ANNUAL PAID AMOUNTS				
Calendar Year Of Payment	AVERAGE			
	Amount Of Paid Claims	Number Of Physicians	Amount Of Paid Claims Per Physician	Amount Of Average Paid Claim
1996-1999	\$9,271,915	1,511	\$6,134	\$139,066
1997-2000	\$10,512,767	1,549	\$6,723	\$155,690
1998-2001	\$11,310,796	1,606	\$6,980	\$160,903
1999- 2002	\$13,099,002	1,664	\$7,881	\$185,001
2000- 2003	\$15,720,804	1,734	\$9,033	\$242,059
2001- 2004	\$14,495,698	1,788	\$8,085	\$251,241

PHYSICIAN PAID CLAIMS - ANNUAL AMOUNT PAID				
Calendar Year Of Payment			Average Paid Claims Per Physician	Amount Of Average Paid Claim
	Amount Of Paid Claims	Number Of Physicians		
1996	\$10,842,496	1,475	\$7,351	\$169,414
1997	\$9,244,098	1,500	\$6,163	\$159,381
1998	\$6,011,720	1,500	\$4,008	\$109,304
1999	\$10,989,345	1,567	\$7,013	\$118,165
2000	\$15,805,903	1,628	\$9,709	\$235,909
2001	\$12,436,215	1,730	\$7,189	\$180,235
2002	\$13,164,544	1,729	\$7,614	\$205,696
2003	\$21,476,552	1,848	\$11,622	\$346,396
2004	\$10,905,480	1,844	\$5,914	\$272,637
Total	\$110,876,353			
Average	\$12,319,595	1,647	\$7,398	\$193,840
% Change	0.6%	25.0%	-19.5%	60.9%

7. SETTLED & ABANDONED CLAIMS AFTER THE PANEL - THE CORRELATION OF PANEL & POST-PANEL RESULTS – THE USE OF DECISIONS ON THE RECORD WITHOUT HEARING

Settled And Abandoned Claims After The Panel

An extremely small number of claims that go through the Panel end up in a Jury Trial, as is obvious from the above data at least as to Physicians and Dentists. A large number of them are either settled between the parties (the claimant or the claimant's representative getting some sum of money) or the claimant drops or abandons the claim at some stage in claim processing.

The numbers as to settled and dropped claims is known. That occurs either at the Panel prior to any Panel decision or it occurs after the Panel and either before or after suit and if after suit, before a Jury hears the evidence.

That settlement-abandonment rate at the Panel is as to 20% of the Providers against whom a claim is brought, as reflected in the following proportions by type of Provider:

Trend Of Providers In Montana Medical Malpractice Claims Settled Or Abandoned At The Panel Prior To Any Hearing

Small Increase In Number Of Providers In Claims Settled Or Abandoned At The Panel

THE LAST TEN YEARS OF PROVIDERS IN CLAIM STAGES						
Montana Medical Malpractice Claim Data By Provider & Panel Filing Years 1996 - 2005						
AT THE PANEL						
Medical Malpractice Claim Stage	Type Providers In Claims With Panel Decision					TOTAL
	Physician	Hospital	Dentist	Facility	Podiatrist	
IN PANEL CLAIMS	1,797	655	77	96	20	2,645
Abandoned Before Decision	264	113	5	9	1	392
Settled Before Decision	74	32	6	6	1	119
In Decision By Panel	1,380	477	60	79	18	2,014
Still-Open At Panel	79	33	6	2	0	120
% Of Closed Claims Settled Or Abandoned	20%	23%	15%	16%	10%	20%

The Panel has collected the data from attorney reporting forms for the time-period July 1, 2004 – January 25, 2006 for the filing years 2000 – 2005, which is comparable to the above data on settled and abandoned claims at the Panel. Those attorney reporting forms also contained data on the number and rate of settled and abandoned claims after the claims left the Panel (those that didn't settled or weren't dropped before hearing) and that data is as follows. It shows a slightly-accelerated rate of settled and abandoned claims at the Panel:

THE LAST SIX YEARS OF PROVIDERS IN CLAIM STAGES¹⁴						
Montana Medical Malpractice Claim Data By Provider & Panel Filing Years 2000 - 2005						
AT THE PANEL						
Medical Malpractice Claim Stage	Type Providers In Claims With Panel Decision					TOTAL
	Physician	Hospital	Dentist	Facility	Podiatrist	
IN PANEL CLAIMS	1,100	400	52	63	19	1,634
Abandoned Before Decision	171	74	3	5	1	254
Settled Before Decision	41	20	6	4	1	72
In Decision By Panel	809	273	37	52	17	1,188
Still-Open At Panel	79	33	6	2	0	120
% Of Closed Claims Settled Or Abandoned	21%	26%	20%	15%	11%	22%

However, additional claims are settled and abandoned after the Panel. It may well be that the Panel's decision affects that rate of settlement and abandonment, although there is no specific data yet to draw that connection. But it is known that as to 81% of all Providers, any abandoned or settled claims occur after the Panel but before the filing of any lawsuit.

AFTER THE PANEL						
Medical Malpractice Claim Stage	Type Providers In Claims With Panel Decision					TOTAL
	Physician	Hospital	Dentist	Facility	Podiatrist	
IN POST-PANEL CLAIMS	279	129	26	17	10	461
In Abandoned Claims	114	45	13	3	2	177
Also In Lawsuits	24	13	4	1	0	42
In Settled Claims	62	41	7	6	5	121
Also In Lawsuits	47	31	6	5	4	93
In Lawsuits	131	75	16	11	7	240
Also In Jury Trials	3	1	0	0	0	4
In Claims Still Pending	103	43	6	8	3	163
% In Closed Claims Settled Or Abandoned						
After Panel - Before Suit	83%	78%	76%	75%	100%	81%
After Panel - After Suit	17%	22%	24%	25%	0%	19%

Correlation Of Panel & Post-Panel Results

The appropriate question is often raised: What is the level of conformity between the results at the Montana Medical Legal Panel and - as to those Providers in claims where the claim does not settle or is not dropped at the Panel stage before hearing - and the results after the Panel?

The only drawback of reviewing the available data is that where there is a settlement in a claim after it has proceeded through the Panel, the level of that settlement is not always and rarely is available to the Panel, as the parties' typically consider it a privileged matter.

¹⁴ Two (2) cases involved a dismissal on motion before the judge, after suit was filed, and were dismissed. Each involved one (1) hospital. For space reasons, these two hospitals are included under "In Abandoned Claims - Also In Lawsuits" although they are dropped by the Judge after a motion by the Provider to do so. Except as to 3 claims, all claims were from Panel Filing Years 2000 - 2005.

Thus, a claimant could "loose" at the Panel and thereafter settle with the Health Care Provider for a nominal amount or a slightly-larger amount that is near the costs of the Provider that would have been incurred had the case proceeded to trial. These independent decisions by Providers skew the data in a way that gives the appearance that somehow the Panel is less-effective: A Provider-favorable decision at the Panel is not matched with the final result that is recorded as being "For" the Claimant because of the independent choice of the Provider.

Thus, the question is properly phrased as: First deduct from settled claims the settlements that were nominal and thus not truly out of conformity with the results of the Panel. Then, what then is the level of conformity between the results at the Montana Medical Legal Panel and the results after the Panel? Because of the confidentiality of settlement results, the question is not answerable.

That being said, for the Providers in post-Panel claims filing Years 1996 through 2005, for those Post-Panel results confirmed by the Panel (the balance not being in lawsuits and having settled or been abandoned or still pending Post-Panel), 77% of the Post-Panel results were in conformity with the Panel results:

Panel Filing Years 1996 - 2005		
	HEALTH CARE PROVIDERS IN CLOSED CLAIMS	
TOTAL	POST-PANEL RESULT	ANNUAL AVERAGE
97	Contrary To Panel	10
319	In Accord With Panel	32
416	TOTAL	42
23%	Contrary To Panel	23%
77%	In Accord With Panel	77%
The remaining Providers in claims are in open claims at the Panel or final Post-Panel results have not been reported to the Panel or the information obtained elsewhere.		

The percentage correlation significantly varies by type of Provider, ranging from 88% for Dentists, down to 31% for Long-Term Care Facilities, with Physician's results at a level of 82% correlation:

PHYSICIANS IN MALPRACTICE CLAIMS					
	RESULT	NUMBER OF PHYSICIANS - RESULT FOR			
Panel Claim Filing Years	At Panel	HCP	Claimant	Claimant	HCP
	After Panel	Claimant	HCP	Claimant	HCP
1996-2005		50	0	41	185
Correlation Of Panel To Post-Panel Results, 1996 - 2005				82%	Results The Same

HOSPITALS IN MALPRACTICE CLAIMS					
	RESULT	NUMBER OF HOSPITALS - RESULT FOR			
Panel Claim Filing Years	At Panel	HCP	Claimant	Claimant	HCP
	After Panel	Claimant	HCP	Claimant	HCP
1996-2005		23	1	17	54
Correlation Of Panel To Post-Panel Results, 1996 - 2005				75%	Results The Same

FACILITIES IN MALPRACTICE CLAIMS					
	RESULT	NUMBER OF FACILITIES - RESULT FOR			
Panel Claim Filing Years	At Panel	HCP	Claimant	Claimant	HCP
	After Panel	Claimant	HCP	Claimant	HCP
1996-2005		20	0	3	6
Correlation Of Panel To Post-Panel Results, 1996 - 2005					Results The Same

DENTISTS IN MALPRACTICE CLAIMS					
	RESULT	NUMBER OF DENTISTS - RESULT FOR			
Panel Claim Filing Years	At Panel	HCP	Claimant	Claimant	HCP
	After Panel	Claimant	HCP	Claimant	HCP
1996-2005		2	0	3	9
Correlation Of Panel To Post-Panel Results, 1996 - 2005					Results The Same

PODIATRISTS IN MALPRACTICE CLAIMS					
	RESULT	NUMBER OF PODIATRISTS - RESULT FOR			
Panel Claim Filing Years	At Panel	HCP	Claimant	Claimant	HCP
	After Panel	Claimant	HCP	Claimant	HCP
1996-2005		1	0	1	1
Correlation Of Panel To Post-Panel Results, 1996 - 2005				67%	Results The Same

For filing year 2005, there are few claims with a final Post-Panel result, but of the 22 such Providers, all of them are Physicians. Only one Post-Panel Result has varied from the Panel result:

		PHYSICIANS IN MALPRACTICE CLAIMS			
	RESULT	NUMBER OF PHYSICIANS - RESULT FOR			
Panel Claim Filing Years	At Panel	HCP	Claimant	Claimant	HCP
	After Panel	Claimant	HCP	Claimant	HCP
2005		1	0	2	19
Correlation Of Panel To Post-Panel Results 2005				95%	Results The Same

Any correlation of Panel and Post-Panel Results needs to take into account the time-lag between the occurrence of the filing of a lawsuit or an earlier or later settlement, dropping of the claim or the holding of a jury trial. At any point in time, claims are being processed through the Panel and are still "Open" at the Panel, there being no post-Panel data. Also, attorneys that participated in the Panel are being surveyed.

Determining those results and recording them means that there is a continuing body of data that is not available: the Post-Panel results for those Providers for which there is no indication either from the attorneys or from independent information that is obtained by the Panel. Post-Panel results thus require that the claim be closed both at the Panel and either fully-closed at District Court or the Supreme Court or a lawsuit having been filed and that information being available to the Panel. As to those cases that have recorded a result as to a judge decision or a jury decision, the final result can change if the case is appealed to the Montana Supreme Court and a different result occurs as a result of that decision. The post-Panel survey status for Providers from 2000 - 2005 is as follows (Dentists were added to the Panel in 1987 and Podiatrists in 1997):

Dentists In Claims - Open at Panel, December 31, 2005:	6
Dentists In Claims - Open at Panel, 2004 Filings:	0
Dentists In Claims - Number of No Post-Panel Closure Result Reported, 2000-2005:	4

Facilities In Claims - Open at Panel, December 31, 2005:	2
Facilities In Claims - Open at Panel, 2004 Filings:	0
Facilities In Claims - Number of No Post-Panel Closure Result Reported, 2000-2005:	6

Hospitals In Claims - Open at Panel, December 31, 2005:	33
Hospitals In Claims - Open at Panel, 2004 Filings:	0
Hospitals In Claims - Number of No Post-Panel Closure Result Reported, 2000-2005:	78

Physicians In Claims - Open at Panel, December 31, 2005:	79
Physicians In Claims - Open at Panel, 2004 Filings:	1
Physicians In Claims - Number of No Post-Panel Closure Result Reported, 2000-2005:	178

Podiatrists In Claims - Open at Panel, December 31, 2005	0
Podiatrists In Claims - Open at Panel, 2004 Filings	0
Podiatrists In Claims - Number of No Post-Panel Closure Result Reported, 2000-2005	5

Decisions On The Record Without Hearing

In late 2001, the Montana Supreme Court adopted a new Rule 12(d) which provides that a “hearing need not be held, telephonic or otherwise, and a decision shall be rendered by the Panel only on the written record, where all of the parties or their counsel have stipulation in writing to the waiver of a hearing.” Except for the fact that an increasing number of claims are being unilaterally-stipulated to as only requiring a decision on the record without the informal hearing, it is not yet fully- known whether the new Rule will or will not increase the number of lawsuits.

The following data from filing year 2000 through February 24, 2006 indicates the substantial and increasing number of claims that have involved a party-waiver of hearing and a substantial and increasing number of Providers in those claims:

Montana Medical Legal Panel		
In-Person Or Telephonic Hearing Decisions & Decisions On The Record Without A Hearing		
Physicians, Dentists, Podiatrists, Hospitals & Specified Long-Term Care Facilities ¹⁵		
Panel Filing Year	Providers In Claims With Decisions On The Record	Number Of Claims With Decisions On The Record
2000	3	3
2001	6	5
2002	4	3
2003	12	8
2004	7	7
2005 Through February 24, 2006	22	15
TOTAL THROUGH February 24, 2006	54	41
Increase In Rate Of Decisions On The Record, 2005 Claims From 12/31/2005 To 2/24/2006		83%
Increase In Rate Of Providers In Decisions On The Record, 2005 Claims From 12/31/2005 To 2/24/2006		88%

The concern comes from known differences in lawsuit rates in Panels where there is a complete “opt out” provision that the parties can exercise without concurrence of anyone. Whether the Rule change to Montana's Rules will have such an effect can only be determined after expiration of additional time.

¹⁵ Data on clinics and other corporate entities has not yet been regularly-collated (although collected) as to their post-Panel status, including their rate of involvement or not in lawsuits. During the period of the above data, two medically-related corporate entities and three clinics were additionally involved in the above claims where a decision was made on the record. There was a filing year 1994 claim that involved just a clinic, as part of an earlier claim involving additional providers and the same set of facts. In that 1994 claim, the decision was made on just the record.

A comparative analysis on older data is available as between Montana's binding entry Panel that still requires a decision of the Panel even where the parties opt out of a hearing and Utah's Panel that allows the parties' to opt out of even dealing with the Panel. The net result of that comparison is that the rate of lawsuits is higher for those Panels that do not require the parties to participate in the Panel process. The rate of lawsuits in Utah as to Physicians is substantially greater than that of Montana.

Montana And Utah "Screening Panel" – The Relative Rate Of Lawsuits As A Percentage Of Total Providers In Claims – "Opt Out" And No "Opt Out" Provisions (Number In Suits Divided By Number In Panel Claims)	
Study On Lawsuit Rates	% Of Physicians In Medical Malpractice Claims Also In Later Lawsuits
Utah 1988 - 1992: Panel - Physician And Hospital In Claims Only -Mandatory Entry Panel Filing But Parties May Opt Out - Non-Binding - Results Not Admissible: Utah Panel, 5 Years Of Closed Claims	60%
Montana 1988 – 1992: Panel - Physician And Hospital In Claims Only – Mandatory Entry Panel – Non-Binding Result – Result Not Admissible - Results Not Admissible: Montana Panel, 5 Years Of Closed Claims	26%
Sources: Montana: Montana Medical Legal Panel. Utah: 1993 Legislative Auditor Study, 1993 Audit: Medical Malpractice Pre-litigation Panels, Utah Legislative Auditor General, 1993.	

It is not known whether the difference between fully-opting out of the Panel and opting out of the hearing - but not the submission of records for an on-the-record determination - is any different. The Panel intends to track the progress of claims on this issue and report on it.

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